

IN AND BEFORE THE
FEDERAL ELECTION COMMISSION

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COMMISSION
OFFICE OF GENERAL
COUNSEL

In re: Dole North Carolina Victory)
Committee, Inc. and Mike)
Mitchell, Treasurer, Respondents)

MUR 5610

RESPONSE AND OBJECTIONS
TO REASON TO BELIEVE FINDING

Dole North Carolina Victory Committee, Inc., ("the Committee") and its Treasurer, Michael W. Mitchell ("Treasurer"), (collectively hereafter "Respondents"), file this Response and Objection(s) to the Finding by the Federal Election Commission ("Commission") of Reason to Believe ("RTB Finding") that Respondents have committed a violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Respondents affirmatively state that neither the Committee nor its Treasurer have committed any violation of the Act.

SUMMARY OF RESPONSE TO RTB FINDING

This matter was not generated based on information ascertained by the Commission or any of its departments or divisions 'in the normal course of carrying out its supervisory responsibilities' pursuant to 2 U.S.C. §437g(a)(2)' as asserted in the RTB Finding. The facts surrounding the violations of federal law were disclosed to and brought to the attention of the Commission by Respondents, *not* Commission staff.

With all due respect, the Commission failed on its own to denote, ascertain or otherwise become aware of the embezzlement committed by Allen Haywood, Assistant Treasurer and Custodian of Records for the Committee ("Haywood"). Absent the diligence and honesty of the Respondents, the Commission no doubt would have treated this Committee in exactly the same manner as it treated a separate joint fundraising committee, the North Carolina's Salute to George W. Bush Committee ("Salute Committee"), from which Haywood also stole funds. In that case, the Commission terminated the Committee without discovering Haywood's theft of funds or his false reporting to conceal the theft.

Respondents have been wholly and completely cooperative with the Commission and the Department of Justice at all times since discovering the theft. Respondents, upon discovery of the crimes, reported them to law enforcement authorities and assisted in the prosecution's case against Haywood, who is now serving a prison sentence for embezzling funds from this Committee *and* the Salute Committee¹.

¹ Haywood also embezzled funds from another joint fundraising committee, the Dole Victory Committee ("DVC"), which was a joint fundraising committee of the Dole 2002 Committee and the National Republican Senatorial Committee ("NRSC") He was not charged with or convicted of his theft of funds from that committee

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Notably absent from the Commission's RTB Finding is the fact that Haywood is now in prison for stealing funds from the two Committees. Haywood's prosecution, indictment, guilty plea and imprisonment resulted almost entirely from the reporting by Respondents to the law enforcement authorities of Haywood's criminal actions and the furnishing of the documents and records of both Committees to the FBI and the Department of Justice necessary for the prosecution of Haywood.

Respondents, NOT the Commission, initiated the internal review of the books and records of the Committee to make certain that all FEC reports filed by Haywood on behalf of the Committee were correct and accurately reported all receipts and disbursements. It was that internal review that uncovered the embezzlement by Haywood. Once the embezzlement from this Committee was discovered, Respondents immediately undertook a separate review of the books, records and FEC reports of the Salute Committee, which had already been terminated by the Commission prior to the internal audit that uncovered Haywood's additional embezzlement.

The reports of both Committees were subsequently amended to reflect the truth of Haywood's illegal acts – and his criminal conduct was properly and timely reported to both the Commission and the Department of Justice. The Commission was advised informally in mid-May, 2003 that the internal review was being undertaken for purposes of insuring the accuracy of the FEC reports prepared and filed by Haywood. As promised to the Commission, all previous inaccurate FEC reports were revised and amended by Respondents to completely and accurately reflect, to the best of Respondents' ability, the receipts and disbursements of both Committees. On July 15, 2003, the Commission was notified specifically of the embezzlement by cover letter which accompanied the filing of the 2d Quarter 2003 FEC report and the amendments to the previously filed reports.

The generation of this matter arises from the discovery and honest reporting by Respondents of the theft by Haywood of funds from the Committee *and* the Salute Committee.

Respondents further state that it appears from the RTB Finding and also from statements made by an attorney from the Office of General Counsel that this enforcement action arises in no small part because of the Respondents' decision to report Haywood's criminal violations to the Department of Justice prior to reporting his actions to the Commission.²

Respondents submit that it was entirely proper to report serious criminal misconduct to the law enforcement authorities with the Department of Justice. It is further entirely appropriate for the Respondents to have taken the necessary time and steps to review and correct all previously filed FEC reports and to simultaneously notify the Commission of Haywood's criminal activities and file all of the corrected reports with the Commission.

² See page 3 of the RTB Finding "The Committee had not, however, voluntarily disclosed the activity to the Commission at the time the Committee referred the matter to DOJ." In addition, numerous Commission employees were present at a meeting with Respondents' counsel on October 26, 2004 during which a representative of the Office of General Counsel directed hostile questions toward the undersigned inquiring as to why the criminal misconduct was reported to DOJ several weeks before informing the Commission of the crimes and violations of law

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Respondents actions were accomplished in a timely fashion with no more than a few weeks separating the reporting of the crimes to the Department of Justice and to the Commission. The next reporting date after Respondents became aware of Haywood's illegal conduct was July 15, 2003 – all reports filed on and after July 15, 2003 are accurate and in accordance with the provisions of the Act, including the amendments necessary to fully disclose Haywood's illegal conduct. Further, the RTB Finding cites to no authority for the proposition that criminal activity is reportable to the Commission rather than or prior to reporting to the Department of Justice.

Respondents believe it is a gross injustice to visit upon this Committee and its Treasurer an enforcement action resulting from Haywood's theft and their reporting of that theft to the criminal justice authorities prior to disclosure to the Commission. Whatever interagency tensions may exist between the Department of Justice and the Commission should not be played out as an enforcement action against these Respondents who have been victimized already by Haywood.

Respondents vigorously deny liability for the violations of the Act committed by Haywood, having taken all reasonable steps to establish proper internal controls for the Committee's operations, having retained a highly respected individual for purposes of handling the Committee's compliance and reporting responsibilities and having ultimately initiated the internal review to insure the accuracy of the FEC reports – which action led to the discovery of the embezzlement.

Respondents are no more culpable for Haywood's stealing funds from three separate federal committees than is the Commission or its staff for failing to discern the theft during 'the normal course of carrying out its supervisory responsibilities' as required by the Act.

To now subject Respondents to an enforcement action because of competitive jurisdictional concerns with the Department of Justice is highly inappropriate and unnecessary. Respondents vigorously contest this enforcement action and any effort by any individuals to penalize the Committee or its treasurer for Haywood's overt deceit and criminal conduct.

Factual Background

I. Respondents Acted Reasonably and with Due Care in the Oversight of the Committee.

Respondents followed proper procedures in the establishment of the Dole NC Victory Committee, Inc. The participants in the joint fundraising committee were the Dole 2002 Committee, Inc., the principal campaign committee of Elizabeth Dole, a candidate for the United States Senate from North Carolina and the North Carolina Republican Party / North Carolina Victory 2002 Committee (collectively, "Participants"). Attached is a copy of the Joint Fundraising Agreement which stipulates the manner in which funds were to be received and disbursed by the joint committee. Exhibit 1, Joint Fundraising Agreement.

Also attached is the Committee's Statement of Organization which discloses the appointment of Allen Haywood as Assistant Treasurer and Custodian of Records. Exhibit 2, Statement of Organization, FEC Form 1.

Mr. Mike Mitchell agreed to serve as a volunteer treasurer for the joint fundraising committee upon the assurances that a person with knowledge and experience in the intricacies and complexities of such committees would be retained to serve as the Assistant Treasurer who would track the expenses and disbursements of the joint committee, pay the bills and be responsible for all reporting and compliance requirements applicable to such committees. See Exhibit 3, Affidavit of Mike Mitchell.

The Committee was not an ongoing campaign committee; rather, the Committee was a joint fundraising committee established pursuant to 11 C.F.R. §102.17. As such, there are complicated rules governing allocation of expenses and numerous reporting requirements that necessitate a person of some experience and skill in the discharge of those duties. Mr. Mitchell assumed the role of treasurer on the representation by the participants that another individual, Mr. Allen Haywood, who possessed superior experience and skill in this area, would manage the day-to-day bookkeeping and compliance responsibilities. See Exhibit 3, Affidavit of Mike Mitchell and Exhibit 4, Affidavit of Neal Rhoades.

The Committee retained a professional fundraising consultant, Carla Eudy of Eudy Nelson & Associates ("EN & A"), to manage all fundraising events and activities for the Committee. See Exhibit 4, Affidavit of Neal Rhoades. Allen Haywood was recommended to Mr. Rhoades by Carla Eudy, the events and national fundraising consultant, as the compliance and bookkeeping individual for the North Carolina's Salute to George W. Bush Committee ("Salute Committee"). Mr. Haywood was described by Eudy as an individual with many years of experience in FEC compliance, including work as the controller for the McCain presidential campaign, at least three other presidential campaigns, the NRSC and numerous other federal campaigns and joint fundraising committees. Based on that recommendation and the obvious skill and experience he possessed in the field of federal campaign finance law and FEC compliance, Haywood was engaged to perform those functions for the Salute Committee.³ See Exhibit 3, Affidavit of Mike Mitchell and Exhibit 4, Affidavit of Neal Rhoades.

Because EN & A was managing the fundraising events for Respondent Committee in the same manner that it had managed the one event conducted for the benefit of the Salute Committee, Haywood was subsequently retained for Respondent Committee to perform the same functions he had performed for the Salute Committee, namely the bookkeeping and FEC reporting and compliance functions. See Exhibit 4, Affidavit of Neal Rhoades.

On or about May 20, 2002, at the time Respondent Committee was in the process of being formed and prior to any fundraising solicitations or events to benefit the Committee, the Participants conferred via conference call(s) to establish formal procedures for the operation(s) of the Committee. A memorandum of procedures was developed as a result of the conference call, a copy of which is attached hereto as Exhibit 5, Dole NC Victory Committee Logistics, May 24, 2002.

³ Unbeknownst to Respondents, Haywood was in the process of embezzling funds from the Salute Committee at the time the second committee was being formed.

The procedures established at the outset of the Committee separated the contributions receipt / processing function from the check writing / disbursement functions. The procedures approved for the Committee were:

- “□ P.O. Box 2008, Salisbury, NC 28145 will be dedicated to receiving contributions related to the Dole NC Victory Committee (except for special events for which the joint committee will / may establish a different address or PO Box)
- Bob Kearley, Dole 2002 Committee staff, will check this box daily (morning) beginning Tuesday, May 28.
- Contributions will be sorted / categorized, photocopied and faxed by Bob to Allen Haywood (ass't treasurer and custodian of records for Dole NC Victory Committee) for entry into Campaign Manager. Alan will be responsible for all FEC reporting, reattribution / redesignation procedures, FEC filing and other official reporting requirements.
- Contributions will be deposited by Bob into the First Union bank account, with assistance from Ted (Koch) as needed.”

See Exhibit 5, Dole NC Victory Committee Logistics.

During the course of the Committee's existence several fundraising events were held in different cities in North Carolina and Haywood took over the receipt of the checks and the contributions functions of the Committee. See Exhibit 6, Affidavit of Ted Koch.

No fundraising activities or events were held by or for the benefit of the Committee after the date of the general election, November 4, 2002. The Committee existed only for a temporary period to conduct fundraising for the participants, the Dole 2002 Committee, Inc. and the North Carolina Republican Party / Victory 2004 Committee (of the North Carolina Republican Party). Exhibit 4, Affidavit of Neal Rhoades.

By April, 2003, the Committee was preparing for termination, awaiting only the receipt of a refund of funds advanced to the Republican National Committee for payment of travel expenses for the Vice-President and others representing the Administration who had been featured at one or more of the fundraising events sponsored by the Committee. It was understood that upon receipt of the refund, the Committee could finalize its business and file a Termination Report with the Commission. See Exhibit 6, Affidavit of Ted Koch.

On May 13, 2003, Mr. Mitchell, the Committee's Treasurer, received a telephone call from Ms. Jane Parks, the analyst assigned to the Committee by the Reports Analysis Division of the FEC ("RAD"), regarding the Respondent Committee's 'best efforts' reporting. Mr. Mitchell immediately sent an email to Cleta Mitchell, Esq. of the law firm of Foley & Lardner LLP (no relation) who serves as counsel to the Committee. Mr. Mitchell advised Ms. Mitchell that Ms. Parks had contacted him because Haywood had failed to provide information requested by her office and that failure to immediately furnish the information would result in a referral of the Committee to the Office of General Counsel. Ms. Mitchell agreed to contact Ms. Parks to determine what information was being sought by the Commission and to insure that any missing information was immediately provided to the Commission. See Exhibit 3, Affidavit of Mike

Mitchell; Exhibit 7, May 13, 2003 email from Mike Mitchell to Cleta Mitchell.

Upon contacting Ms. Parks, Ms. Mitchell learned that Haywood had apparently failed to furnish adequate information contained in a Request for Additional Information concerning the Committee's 'best efforts' to obtain donors' employer and occupation information. See Exhibit 8, June 11, 2003 Letter to Jane Parks from Cleta Mitchell; Exhibit 9, May 14, 2004, email from Cleta Mitchell to Respondents Mike Mitchell and Committee Participants.

Ms. Mitchell contacted Haywood, who in turn contacted Ms. Parks and submitted a letter supplementing the previously filed response to the RFAI. The supplemental information contained the following additional sentence:

"It was the standard practice of the Committee to send these follow up letters to donors within 30 days of receipt of a contribution, a fact which was omitted from my Form 99 letter to Mr. John Gibson dated April 24, 2003."

See Exhibit 10, Haywood letter dated May 14, 2003.

Ms. Mitchell, Respondent Mike Mitchell and other Committee participants were advised by Haywood that Ms. Parks had assured him that the supplemental letter regarding 'best efforts' was all she needed and the threat of referral to OGC was withdrawn because he had satisfied her questions. See Exhibit 11, May 19, 2003 email from Allen Haywood to Cleta Mitchell and Participants/Respondents.

Ms. Mitchell contacted Ms. Parks who confirmed that Haywood was correct and that the only outstanding request had been the need for the additional language that Haywood had subsequently provided in his May 14, 2003 letter. Ms. Mitchell asked whether there were *any* remaining or outstanding issues related to the Committee and was advised by Ms. Parks that there were none. Ms. Mitchell then advised Ms. Parks that nonetheless, Respondents were hiring an individual to review all the books and records of the Committee to be certain that the FEC reports filed on behalf of the Committee were accurate. Ms. Parks stated in response: "That is entirely up to you but it is always better if you find any problems before we do."

Ms. Mitchell had conveyed to the Participants' representatives her concerns related to the possible accuracy of the FEC reports and recommended that the Committee retain Ted Koch to conduct a review of the FEC reports and reconcile the books, records and bank accounts to the FEC reports. Respondents immediately agreed that the review should be undertaken as soon as possible. See Exhibit 3, Affidavit of Mike Mitchell; Exhibit 12, May 14, 2003 Email response from Mike Mitchell to Cleta Mitchell; Exhibit 13, May 14, 2003 Email response from Mark Stephens, representative of Dole 2002 Committee, Inc. to Cleta Mitchell; Exhibit 14, May 14, 2003 email from Neal Rhoades, representative of the North Carolina Republican Party to Cleta Mitchell (all authorizing the hiring of Ted Koch to review the Committee's books and records and reconcile to FEC reports to insure accuracy).

The internal review was commenced by Mr. Koch in late May, 2003 at which time it became apparent that Haywood had stolen funds from the Committee and concealed his criminal

activities. See Exhibit 6, Affidavit of Ted Koch.

Upon discovery of the theft, Ms. Mitchell notified Haywood and demanded that he turn over all records related to the Committee and bring such documents and records to her office no later than the close of business on May 21, 2003. See Exhibit 15, May 21, 2003 Cleta Mitchell letter to Carla Eudy and Allen Haywood.

In a letter to Ms. Parks dated June 11, 2003, Ms. Mitchell memorialized her previous conversation with Ms. Parks and confirmed to the Commission the commencement by Respondents of an internal review of the Committee's records and reports. See Exhibit 8, June 11, 2003 Letter from Cleta Mitchell to Jane Parks, Federal Election Commission, Reports Analysis Division.

In that letter, Ms. Mitchell also notified Ms. Parks directly of the Committee's earlier actions removing Haywood as Assistant Treasurer and Custodian of Records and severing all ties between the Committee and Haywood. See Exhibit 16, Amendment to Statement of Organization, filed May 29, 2003 and Exhibit 8, June 11, 2003 Letter from Cleta Mitchell to Jane Parks.

At no time following the June 11, 2003 letter to the Commission have Respondents or anyone representing the Committee received any inquiry or follow-up communication(s) regarding the internal review, the Committee's actions removing Haywood or any other matter involving Haywood and the Committee. See Exhibit 3, Affidavit of Mike Mitchell.

On July 15, 2003, the Committee filed its 2d Quarterly Report for the period ending June 30, 2003 which accurately reported the Committee's receipts and disbursements, including the criminal embezzlement by Allen Haywood, together with amendments to all previously filed reports and a cover letter which directly informed the Commission of Haywood's criminal activities. See Exhibit 17, July 15, 2003 Letter from Cleta Mitchell to Jane Parks, Federal Election Commission; Exhibit 18, FEC Reports Index for Dole NC Victory Committee.

On the same date (June 11, 2003) that Respondents through their counsel notified the FEC of the removal of Haywood as Assistant Treasurer and the ongoing internal review of the Committee's records and reports, but prior to filing the 2d Quarterly Report, 2003, the Committee's representatives met with law enforcement authorities in Raleigh, North Carolina to report the theft of Committee funds by Haywood. The meeting took place on June 11, 2003. See Exhibit 3, Affidavit of Mike Mitchell; Exhibit 4, Affidavit of Neal Rhoades; Exhibit 19, June 10, 2003 email from Cleta Mitchell to Mike Mitchell, Neal Rhoades, Bill Cobey and Mark Stephens.

Respondents were asked to keep the Department of Justice informed regarding any disclosure to any third parties, including the FEC, of information regarding Haywood's criminal activities and further were asked not to publicly disclose the criminal wrongdoing of Haywood until such time as the FBI could complete or substantially complete its investigation into the crime. Respondents were also requested to submit to the Department of Justice any planned public statements or documents in order to insure that such public statements did not compromise the FBI investigation. The Committee complied with the request. See Exhibit 20, June 13, 2003

letter from Cleta Mitchell to United States Attorney Bobby Higdon.

The Committee plan at all times was to notify the Federal Election Commission of Haywood's criminal activities as soon as possible upon completion of its review of the accounts and FEC reports and to simultaneously file amendments to the previously filed erroneous FEC reports. The absolute deadline for notification was the next reporting date, July 15, 2003. See Exhibit 20, June 13, 2003 letter from Cleta Mitchell to United States Attorney Bobby Higdon.

The reconciliation of the books and accounts took longer than anticipated because of the difficulty of reconciling the credit card contributions which had been grossly mishandled by Haywood. In order to file correct and accurate amendments to the FEC reports, it was necessary to review each of the several hundred credit card contributions which resulted in a delay in completing the amendments to the reports. See Exhibit 6, Affidavit of Ted Koch.

Upon completion of the review and preparation of the amendments to all FEC reports, amendments were prepared and filed on July 15, 2003 together with the 2d Quarterly report for 2003. See Exhibit 18, Reports Index of Dole North Carolina Victory Committee.

At all times, the Committee and its Treasurer exercised due care and diligence in the exercise of their responsibilities, as evidenced by their:

(1) Retaining an expert in the field to insure compliance with FEC regulations. Haywood was known to be an expert in the field of FEC law and compliance and a professional in providing such services. The Committee established proper internal procedures which were breached by Haywood without the knowledge of the participants or Respondents. Haywood, because of his expertise in the field, was aware of exactly how to steal funds from the Committee without anyone's knowledge, as evidence by his theft of funds from the Salute Committee which escaped everyone's attention, including that of the Commission which terminated the Committee prior to Respondents' discovery of the theft from that committee.

(2) Development of written procedures for operations of the Committee. Representatives of Dole 2002 Committee, North Carolina Republican Party, North Carolina Victory 2002 Committee and Allen Haywood convened via conference call at the time of the formation of the Committee to discuss and establish procedures for managing the contributions and disbursements of the Committee. Written procedures were in fact discussed and established as memorialized in a memorandum circulated to all participants. Notwithstanding the procedures agreed upon, Haywood took advantage of the circumstances surrounding a joint fundraising committee with multiple events in various locations to gain control over the contributions processing functions of the Committee in order to facilitate his scheme to embezzle funds from the Committee.

(3) Review of Haywood's work and uncovering the theft. Neither the Commission nor any of its divisions were responsible for discovering the embezzlement from the Committee (or either of the other two committees) and Haywood's falsification of the FEC reports. According to the Commission's employees, at the time the internal review was commenced there were 'no outstanding issues' remaining with the Commission. Respondents undertook the cost and expense of the internal review to *insure* compliance with the law – and that is the reason the

embezzlement was uncovered in the first place. . .by Respondents.

(4) Reporting the criminal conduct of Allen Haywood to all proper authorities, including the Commission. Respondents took great care to report the criminal activity to those charged with enforcing the criminal law and to report and correct Haywood's actions concealing his embezzlement through his incorrect FEC reports. A delay of a few weeks to a) be sure all the FEC reports were accurate and b) no premature publicity would jeopardize the criminal investigation should not be held against Respondents as a reason for further penalizing the Committee and /or its Treasurer. Notwithstanding the potential adverse publicity or risk, Respondents have fully disclosed all information to the Commission on a timely basis. No information has been withheld from the Commission at any time other than the brief delay requested by the Department of Justice in order to allow sufficient time for the FBI to conclude its investigation prior to public disclosure of the criminal activity committed by Haywood.

(5) Insuring that no additional false reports were filed with the Commission after discovery of the embezzlement from both Committees, including one which had been terminated. Respondents have made certain that all FEC reports filed *after* the discovery of the criminal wrongdoing have been true and accurate to the best of their knowledge and belief. Further, Respondents have amended Haywood's reports to accurately reflect all receipts and disbursements, including those which were unauthorized and the unlawful conversion of funds from another committee. Respondents have at *no* time ratified the illegal conduct committed by Haywood and have complied at all times with the requirements of law to the best of their knowledge and capabilities.

Erroneous Statements in the RTB Finding

The RTB Finding is replete with misstatements to which Respondents now turn in an effort to correct the factual record regarding this matter.

1. "This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. (citations omitted) Page 1, Lines 11-13.

Response: This is an incorrect statement to the extent that it suggests the Commission 'uncovered' the embezzlement of Haywood. An audit was supposedly commenced by the Commission during the latter part of 2004, nearly two years *after* Respondents conducted their own internal audit and discovered Haywood's criminal acts and reported same to the Commission and the Department of Justice. As of this date, the audit has not been completed and this MUR was not generated by the internal supervisory activities of the Commission. It was generated because Respondents disclosed to the Commission that the crimes had been committed and, according to a representative of the Commission's audit staff, the audit was commenced because of the 'large number of amendments filed by the Committee'. The 'large number of amendments' were filed to correct the record and bring the Committee into compliance with provisions of the Act governing reporting and disclosure. Respondents furnished Committee records and documents to the FEC audit division in mid-November, 2004 but have heard nothing since that time regarding the next steps of the audit. The RTB Finding was issued prior to completion of the

audit and raises a question as to why the Commission would conduct an audit at all if an enforcement action has already been initiated?

2. "Neither Haywood nor the Committee kept track of the disbursements nor reported any of them to the Commission, resulting in separate and distinct violations of the Act." Page 1, Lines 19-21.

Response: Haywood, in fact, did keep a record of the disbursements which ultimately turned out to be disbursements to himself. Those were recorded in the check register as 'postage' and a separate sheet of paper kept track of the dates and amounts of the payments he made to himself. Because Haywood was Assistant Treasurer assigned the responsibilities for preparing and filing the FEC reports, he did not disclose or report those payments to the Commission or the Committee. Ultimately, it was Respondents who secured the books and accounting records from Haywood, ordered and paid for duplication of bank records destroyed by Haywood, ascertained the payees of all disbursements and properly reported to the Commission the unauthorized payments Haywood had made to himself.

3. "Furthermore, the Committee improperly accepted contributions from corporations in violation of the Act." Page 1, Lines 22-23.

Response: The statement is false. The Joint Fundraising Agreement specifically forbids the acceptance of corporate contributions by the Committee. See Exhibit 1, Article 3, A.1. "Dole NC Victory Committee shall establish a depository account to be used solely for the receipt and disbursement of all contributions to Dole NC Victory Committee that are permissible for the support of federal candidates under the Federal Election Campaign Act of 1971, as amended and political party committees in the state of North Carolina, pursuant to N.C. Gen. Stat." and Article 3, A.2. "The parties agree that only contributions from individuals will be deposited into the depository account of Dole NC Victory Committee."

In fact, Haywood stole corporate contributions payable and belonging to another joint fundraising committee ("Dole Victory Committee" or "DVC") which was eligible to accept corporate contributions to be disbursed to the non-federal account of the National Republican Senatorial Committee ("NRSC"). Haywood was not authorized to accept or process corporate contributions into the Committee's accounts nor was he authorized to steal funds from DVC, another joint fundraising committee. However, he converted those funds which were legally intended for and the property of DVC, illegally deposited the funds into the Committee's accounts and then disbursed the funds to himself. Neither this Committee nor the DVC received the funds derived from the corporate contributions stolen from the DVC by Haywood.

4. "BCRA did not substantively alter the provisions of the Act relevant to the facts of this matter." Footnote 2, Page 1.

Response: As evidenced by the discussion above, the corporate contributions were legally made to and intended for the joint fundraising committee between Dole 2002 Committee, Inc. and the NRSC for deposit into the NRSC's non-federal account. That account was closed on November 5, 2004 as a result of the enactment of BCRA. Prior to BCRA's enactment, corporate contributions such as those stolen by Haywood from the DVC were legal.

5. "According to Haywood, his work with the Committee began when he was hired to carry out the accounting and reporting responsibilities for one fundraising event being co-hosted by the Committee. Eventually, his responsibilities expanded to other Committee events and he started receiving contributor checks at his home in Washington, D.C. Haywood claims that he alone was responsible for all of the functions of the accounting and reporting operation. However, he and Committee officials never finalized a contract concerning his employment and salary. As there was no mutual understanding regarding his compensation, Haywood resolved the matter by writing himself checks from Committee accounts." Page 2, Lines 6 – 14.

Response: It is odd indeed that the Commission should regurgitate the statements of a convicted felon, the perpetrator of these crimes, as the 'facts' supporting the RTB Finding. It is further startling that the Commission's RTB Finding in MUR 5610 contains identical language to an RTB Finding in the companion documents regarding the Salute Committee, in which the Commission found reason to believe that a violation had occurred but dismissed and closed that part of this MUR. The facts are these: Haywood was recommended and hired initially to work for the Salute Committee for an established one-time payment of \$6,000 which he, in fact, received. That did *not* stop him from stealing an additional \$18,000 from the Salute Committee. The Salute Committee had only one fundraising event and that was always the plan for that committee: one event only. After the Salute Committee concluded its work, another joint fundraising committee was established to carry on additional events and ongoing fundraising activities to benefit different participants but with the same fundraising consultant managing all events, namely Eudy Nelson & Associates, with whom Haywood was affiliated and from whose offices he worked.

It is wholly inappropriate for the Commission to state as "fact" that the reason Haywood stole money and failed to perform the job he was hired to do by *either* Committee, namely, the proper accounting and FEC reporting of the joint fundraising receipts and disbursements, was through some 'fault' of the Committee in failing to advise him of the amount he was to be paid for his services. That is simply a lie told by an obviously dishonest person. It is hardly an excuse for embezzlement to say "I didn't know how much they wanted to pay me so I helped myself to as much money as I wanted..."

In the case of the Salute Committee, Haywood was promised and paid a lump sum payment for his work. And he still stole money from the Committee, which Respondents, not the Commission, uncovered and disclosed.

In the case of the Respondent Committee, Haywood says he 'never reached agreement' on what he was to be paid 'so he resolved the matter by writing himself checks from Committee accounts'. That is a lie – the fact is that he stole money from the Committee, not because he had 'no agreement on compensation' but because he is a thief.

6. "Between October 2002 and May 2003, the Reports Analysis Division ("RAD") sent a number of Requests for Additional Information ("RAFI") to the Victory Committee, which were either only partially answered or completely ignored by the Committee." Page 2, Lines 20-22.

Response: A review of the RFAI letters received by the Committee and the various responses reveals two key points with regard to this statement in the RTB Finding:

First, the RFAI letters repeated the same questions over and over again about minor issues and, despite answers furnished in response to the RFAs, the same questions continued to be asked (and answered). None of the letters raised questions the possible misappropriation of Committee funds. Rather, the letters asked repeatedly about such mundane issues as the name of the Committee: asked and answered at least twice.

Another example: each report filed by the Committee which disclosed a contribution in excess of federal limits generated another question about 'excessive contributions' notwithstanding the fact that as a joint fundraising committee, the Respondent Committee was legally entitled to receive contributions that exceeded federal law as long as the contributions were in compliance with North Carolina state law. The Committee repeatedly answered that question but every report filed by the Committee generated the same question as though no response had ever been supplied. The RFAs did not reveal or address any issues of a substantive nature, but were continually directed at 'form' over substance.

Second, Haywood was advised by RAD that his revised response filed on May 14, 2003 regarding the missing sentence in the 'best efforts' letter satisfied RAD's inquiry and he so informed Respondents. Counsel for the Committee confirmed with Ms. Parks that, as of May 14, 2003, there were NO outstanding issues related to any of the RFAs to the Committee. Notwithstanding that assurance, Respondents undertook the internal review in an abundance of caution and in order to make certain the FEC reports were accurate. It was that internal review which uncovered the embezzlement.

7. "...one or more of those requests 'apparently' prompted the Committee to conduct an extensive internal review of its records." Page 2, Lines 22-23 through Page 5, Line 1.

Response: Respondents specifically reported orally and in writing to RAD that notwithstanding the confirmation that RAD was satisfied with the Haywood responses from the Committee and that the Committee had no outstanding issues with the Commission, the Committee was nonetheless undertaking its own review to make certain all the FEC reports were accurate.

8. "After completing its internal investigation, the Committee filed an amended Statement of Organization removing Haywood from his position with the Committee." Page 3, Lines 1 – 2.

Response: This is incorrect. The Committee had not completed its internal investigation at the time it filed the amended Statement of Organization removing Haywood. Rather, the preliminary review which uncovered the theft prompted Haywood's removal on May 29, 2003. The internal review was not completed until just before the date when the 2d Quarterly Report, 2003 and the amendments to the prior reports were filed, which was July 15, 2003.

9. "The Committee had not, however, voluntarily disclosed the activity to the Commission at the time the Committee referred the matter to DOJ." Page 3, Lines 7-8.

Response: This statement clearly indicates that this MUR and the RTB Finding arise from the OGC's annoyance with Respondents for reporting the criminal actions to DOJ prior to revising and filing amendments to the FEC reports on July 15, 2003. As discussed above, this is an outrageous abuse of the Commission's prosecutorial 'discretion' – to punish and otherwise seek to penalize Respondents in a pique for the order in which the illegal activities were disclosed to the two agencies with concurrent jurisdiction.

It was important to Respondents to bring Haywood to justice and to seek restitution from him of the amounts he stole. Is the Commission suggesting that Respondents should *not* have reported the criminal activity – the embezzlement of thousands and thousands of dollars – to the Department of Justice for investigation by the FBI? There is *no* guidance in the Commission's regulations or policy manuals advising the regulated community as to what to do when someone steals money from your committee. The only requirement is that false reports cannot knowingly be filed. As soon as Respondents learned of the situation, from that moment forward every report filed with the Commission has been true and correct to the best of Respondents' knowledge and information. All previously filed incorrect reports were amended. Those were filed on July 15, 2003 simultaneously with a specific cover letter advising the Commission of the Haywood situation. Since that date, it has taken nearly 18 months for the Commission to get around to raising questions about the theft and now seeking to penalize Respondents, not Haywood! During that same period, Respondents cooperated fully with the Department of Justice and Haywood was sentenced to and commenced serving his prison term nearly six months before this RTB Finding was issued.

The Commission appears to be suggesting that Respondents did the wrong thing by notifying the Department of Justice of the crimes before advising the Commission of them. The time delay was no more than three to four weeks and resulted from a specific request from the Department of Justice to give time to conclude its investigation before public disclosure of the theft and also because Respondents' took extraordinary care to make sure the amendments to the previously filed FEC reports were properly prepared and accurate. Absent some specific guidance to the contrary, which the Commission has failed to cite, Respondents believe they acted in good faith in addressing the respective jurisdictional authorities of both the Commission and the DOJ.

10. "Thus, in performing his duties, Haywood acted as an agent of the Committee." Page 4, Line 1.

Response: See Legal Discussion rebutting the RTB Finding's analysis on the law of agency in the context of this MUR.

Responses to Specific Alleged Violations of the Act

Respondents submit this response to each alleged violation of the Act:

1. 2 U.S.C §432(c)(5). Requirement that the treasurer of a committee keep a detailed account of disbursements.

Response: Haywood was selected and appointed as Assistant Treasurer and Custodian of Records because he was a highly skilled individual with impeccable credentials and knowledge of the Act, with an excellent reputation and more than a decade of experience to keep the detailed account of the Committee's disbursements. In fact, the Assistant Treasurer did keep a detailed account of disbursements, including the detail of the amounts stolen from the Committee. That document was uncovered when the internal review and audit was conducted by Respondents and has been provided to the Commission's audit staff. An assistant treasurer is authorized to act in the stead of the Treasurer, which Haywood did.

2. 2 U.S.C. §432(h)(1). All receipts received by a committee shall be deposited in designated campaign depositories. See also 11 C.F.R. §§103.2 and 103.3(a).

Response: All receipts were deposited into a designated campaign depository. However, Haywood then disbursed funds to himself without authorization and in violation of the law. Haywood also knowingly diverted and deposited into the Committee's designated depository certain funds which were intended for another joint fundraising committee, the Dole Victory Committee, and which funds were the property of that committee. Those were the only funds not deposited into their designated campaign depository but those are not funds over which Respondents had control or responsibility.

3. 2 U.S.C. 434(b)(4)(H)(v). Treasurer is to file reports of disbursements and contributions with the Commission. Each report must disclose the total amount of disbursements for any political committee.

Response: Haywood was designated as the Assistant Treasurer of the Committee which designation was filed of record with the Commission. As such, he had authority to sign and file the Committee's reports and to obtain the password necessary to electronically file the reports of the Committee. Haywood electronically signed the name of the Treasurer rather than his own. Because the Commission's own procedures authorize the electronic filing of reports by any person with access to the password and because Haywood was legally entitled to obtain and utilize the password, he was able to file false reports under the Treasurer's name. Any and all false reports were filed by Haywood to conceal his embezzlement and about which Respondents had no knowledge – but which actions were carried out in accordance with the Commission's own procedures.

All reports filed after the discovery of Haywood's criminal activities have been true and correct to the best of Respondents' ability and Haywood's previous false reports have been amended to comply with the Act.

4. 2 U.S.C. 434(b)(6)(B)(v). Each report filed by the treasurer must disclose disbursements to any person in excess of \$200.

Response: Haywood's reports on behalf of the Committee did not disclose his unauthorized disbursements to himself. However, upon discovery of the additional disbursements, Respondents have amended the previously filed reports to disclose all disbursements, including the unauthorized disbursements to Haywood. Again, Haywood was authorized to file the Committee's reports pursuant to 11 C.F.R. §102.7.

5. 11 C.F.R. §102.7. A committee is allowed to appoint assistant treasurers.

Response: Respondents duly and properly appointed Haywood the assistant treasurer of the Committee. His responsibilities included disbursement of the proceeds of the joint fundraising committee and all compliance duties including the reporting of receipts and disbursements to the FEC. Mr. Mitchell authorized Haywood to prepare and file the FEC reports because of the complexity of joint fundraising committees and Haywood's superior knowledge and experience with the compliance and reporting issues related to such committees.

6. 11 C.F.R. §109.3. This subsection defines "agent" for purposes of coordinated and independent expenditures.

Response: As the Office of General Counsel notes in the RTB Finding, this provision of law is not specifically applicable to this enforcement action. Haywood was an agent of the Committee but his grant of authority did not include authorization to commit illegal acts against or in the name of the Committee. See additional discussion below on the law of agency applicable to this MUR.

7. 2 U.S.C. §441b(a). Committees are prohibited from knowingly accepting or receiving a corporate contribution.

Response: Respondents did not knowingly accept or receive any corporate contribution(s). Haywood had no authority to accept corporate contributions on behalf of the Committee. In fact, Haywood stole corporate funds intended for and which were the property of another joint fundraising committee (DVC) which was eligible to accept corporate contributions. He deposited those stolen funds into the Respondents' account and disbursed the funds of the DVC to himself. The Committee did not receive the benefit of the corporate funds nor did the Committee accept such contributions. The Joint Fundraising Agreement which established the Committee specifically prohibited the acceptance or deposit of corporate contributions.

LEGAL DISCUSSION AND CONCLUSIONS

I. Treasurer Mitchell is Not Liable for the Illegal Actions of the Assistant Treasurer Under the Act and Commission Regulations and Policies

The RTB Finding cites to no authority that the Treasurer is liable for the illegal actions of the duly appointed Assistant Treasurer. Respondents notified the Commission in the Statement of Organization that Haywood was appointed as the Assistant Treasurer and Custodian of Records. As such, Haywood had authority to act in the absence of the Treasurer – but there is no statutory authority for any person, including Haywood, to violate the Act. He was authorized in law and in fact to comply with the Act and to do so in the absence or unavailability of the Treasurer. There is no authority cited for the proposition that Mr. Mitchell is legally responsible for the illegal actions of an assistant treasurer. According to the RTB Finding, a committee treasurer is ultimately "the person responsible for accounting for disbursements and reporting them to the Commission." RTB Finding at 3, citing 2 U.S.C. §§ 432(c)(5), 434(b)(4)(H)(v), (6)(B)(v). A plain reading of these sections however, does not necessarily provide sufficient support for that proposition.

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Although the sections cited by the Office of General Counsel confer duties upon a committee's treasurer, the agency's own regulations provide that an assistant treasurer adopts those duties and responsibilities when the treasurer is "unavailable." 11 C.F.R. §102.7(a). This language contemplates the assumption of the role of treasurer by the assistant. Therefore, in a situation where the primary treasurer is "unavailable," the assistant treasurer becomes the responsible party for any activity during that time period. Thus, under the facts of the instant case, Haywood alone was responsible for the accounting, reporting and depositing of contributions which were the duties he was engaged to perform. Further, Respondents did not simply hire him as a 'vendor' or 'consultant' – rather, he was specifically appointed the Assistant Treasurer in order to carry out his duties under the full supervision not only of the Treasurer but of the Commission as well.

Moreover, although the statutes place a duty upon a committee's treasurer to file reports and make deposits, the OGC has notably failed to cite to *any* statutory language which provides that a treasurer is strictly liable for the unauthorized actions of a duly appointed assistant treasurer.

Further, the Commission has recently adopted policy guidelines related to the personal liability of a committee treasurer and, if such guidelines are followed by the Commission in this MUR, the guidelines clearly shield Respondent treasurer from any personal liability for the illegal actions of the assistant treasurer. See 11 CFR Part 111, Federal Election Commission Notice 2004—20, *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, Federal Register, Vol. 70, No. 1, at 3, Monday, January 3, 2005.

The new guidelines state that the Commission will consider treasurers parties to enforcement proceedings in their personal capacities where information indicates the presence of one of the following factors, *none* of which are present in the instant case:

- (1) that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers; or
- (2) where the treasurer recklessly failed to fulfill the duties imposed by law; or
- (3) where the treasurer has intentionally deprived himself or herself of the operative facts giving rise to the violation.

In this instance, none of the factors referenced above were present. Respondent treasurer did not knowingly or willfully violate the Act in any manner. He took care to make certain that duly qualified professionals with expertise in the complexities involving joint fundraising committees were involved in and responsible for the bookkeeping and reporting responsibilities of the joint fundraising committee. There are no allegations or facts suggesting that the Treasurer was in any way reckless with respect to his duty of care to the Committee and, finally, was pro-active in insuring and authorizing the internal review that led to the discovery of the illegal conduct committed by the assistant treasurer.

“If, at any time in the proceeding, the Commission is persuaded that the treasurer did not act with the *requisite state of mind*, subsequent findings against the treasurer will only be made in his or her official capacity.” (emphasis added)

Id at 5.

Accordingly, there are no facts to suggest that the Respondent Treasurer in this MUR acted with the requisite ‘state of mind’ in any instance to support a finding of personal liability against him as a result of Haywood’s theft of funds from the Respondent Committee.

II. Respondents Are Not Liable for the Illegal Actions of the Assistant Treasurer Under the Principles of Agency Law Applicable to these Facts

The cases relied upon by OGC in the RTB Finding are inapposite to the facts *and* the public policy imperatives of this case.

The OGC’s reliance on American Society Of Mechanical Engineers, Inc. v Hydrolevel Corp., 456 U.S. 556, 102 S.Ct. 3502 (1982) is misplaced and distinguishable from these facts. There, the Court held an association vicariously liable under anti-trust principles for the misuse of its standards by one or more of its members to the financial detriment of others in the industry. That case has been widely discussed and is clearly distinguishable from the facts at issue here.

There were and are no third parties who suffered financial loss as a result of Haywood’s illegal conduct. Rather, it is *Respondent Committee* and the participants in the Committee who were the intended beneficiaries of the fundraising efforts who suffered *all* the financial loss and adverse impact of Haywood’s actions. The legal principle invoked by the Supreme Court in ASME v Hydrolevel was the public policy imperative of applying anti-trust principles to protect third parties against financial loss arising from violations of the anti-trust laws committed by an agent by holding a principal responsible for the third parties’ financial loss. In fact, the case specifically dealt with principles of agency law relative to liability of a principal to third persons:

“As the Court of Appeals observed, under general rules of agency law, principals are liable when their agents act with apparent authority and commit torts analogous to the antitrust violation presented by this case. Citing generally 10 W. Fletcher, Cyclopedia of the Law of Private Corporations ¶ 4886, pp. 400-401 (rev. ed. 1978); W. Seavey, Law of Agency § 92 (1964). [“Apparent authority is the power to affect the legal relations of another person by transactions with third persons, professedly as agent for the other, arising from and in accordance with the other’s manifestations to *such third persons*.” Restatement (Second) of Agency § 8 (1957).] For instance, a principal is liable for an agent’s fraud though the agent acts solely to benefit himself, if the agent acts with apparent authority. See, *e.g.*, Standard Surety & Casualty Co v Plantsville Nat Bank, 158 F.2d 422 (CA2 1946), cert. denied, 331 U.S. 812, 67 S.Ct. 1203, 91 L.Ed. 1831 (1947). Similarly, a principal is liable for an agent’s misrepresentations that caused *pecuniary loss to a*

third party, when the agent was acting within the scope of his apparent authority. Restatement (Second) of Agency § § 249, 262 (1957) (Restatement); see Rutherford v Rideout Bank, 11 Cal.2d 479, 80 P.2d 978 (1938). Finally, a principal is responsible if an agent acting with apparent authority tortiously injures the business relations of a third person *Id.*, § 248 and Comment b, p. 548.

Under an apparent authority theory, "[l]iability is based upon the fact that the agent's position facilitates the consummation of the fraud, in that from the point of view of the third person the transaction seems regular on its face and the agent appears to be acting in the ordinary course of the business confided to him." *Id.*, § 261, Comment a, p. 571. See Record v Wagner, 100 N.H. 419, 128 A.2d 921 (1957).

Id. at 565-66 (emphasis added)

Clearly, the Hydrolevel case is intended to apply to injuries suffered by 'third persons'. However, in the instant matter, the financial loss was suffered by the principal, not a third party. Donors whose funds were stolen by Haywood (or, in the case of the credit card contributions, never processed at all) were not disadvantaged financially. Absent specific notice to each donor, it is probable that individual donors may yet be unaware of the diversion of their funds by Haywood. Under the provisions of the Act, the contribution is deemed made at the time the donor relinquishes control over the funds. 11 C.F.R. § 110.1(b)(6). There is no third party whose rights or pecuniary interests were injured by Respondents through the actions of Haywood as 'agent' of the Committee.

Further, Haywood was never authorized to steal money. To the contrary, he was hired and deputized by Respondents for the sole purpose of insuring proper accounting, bookkeeping and reporting to the FEC of the Committee's receipts and disbursements. Haywood's actions could never have been reasonably contemplated since they were the opposite of the authority conferred upon him nor can his actions be attributed to the Respondents. "A principal is responsible for the illegal acts of an agent [unless] those acts were 'clearly inappropriate or unforeseeable in the accomplishment of the desired result.'" Transfair International, Inc v United States of America, 54 Fed. Cl. 78, 83 (2002), citing N L R B v Georgetown Dress Corp., 537 F.2d 1239, 1244 (4th Cir.1976) (quoting Restatement (Second) of Agency § 231, cmt. a.); see also Restatement (Second) of Agency § § 34, 411. The rationale behind this rule "is that if the act is not appropriate or expected, it can be neither authorized nor incidental to an authorized act." Bates v United States, 517 F.Supp. 1350, 1358 (W.D.Mo.1981), *aff'd*, 701 F.2d 737 (8th Cir.1983); see also Lyon v Carey, 385 F.Supp. 272, 273 (D.D.C.1974). "In a similar vein, the Restatement (Second) of Agency suggests that a principal may be liable for the illegal actions of its agent if either the illegal acts were taken by the agent at the principal's direction . . . or if the agent had apparent authority to perform its tasks in an illegal or unlawful fashion . . .". Transfair, 54 Fed. Cl. at 83. The Restatement (Second) of Agency further provides that the circumstances must be considered when interpreting the 'apparent authority' of an agent. See Section 34, Circumstances Considered In Interpreting Authority, Comment (g). "Authority to do illegal or tortious acts, whether or not criminal, is not readily inferred." *Id.*

Indeed, as a matter of agency law, Haywood did not have either actual or apparent authority to embezzle funds and conceal the theft by filing false FEC reports. An agent does not act within actual or apparent authority when committing a fraud against his or her principal. *In the Matter of American Biomaterials Corp v Helitrex Corp*, 954 F.2d 919, 924-25, n. 7 (3rd Cir. 1992). In *Helitrex*, one business partner embezzled funds by failing to enter sales into the corporate books after pocketing the funds. The corporation's tax returns were therefore inaccurate for those periods. The court rejected the government's argument that the corporation was responsible for the actions of its embezzling agent, and held that "corporate officers have no apparent authority to embezzle." *Id.* at n.7. As in *Helitrex*, Haywood had no authority, apparent or otherwise, to embezzle funds from the Committee.

Moreover, it is well established that a principal cannot generally be held vicariously liable for punitive damages. The United States Supreme Court and the common law recognize "that agency principles limit vicarious liability for punitive awards." *Kolstad v American Dental Assoc.*, 527 U.S. 526, 541 (1999). In order for vicarious liability to lie in the context of punitive damages, there must be some element of intent, knowledge or ratification on the part of the principal. *See id.*; *United States v Southern Maryland Home Health Services, Inc.*, 95 F. Supp.2d 465 (D.M. 2000). A monetary penalty imposed by the Commission against these Respondents would be "punitive" because it "does not merely reimburse the Government with compensatory damages." *Id.* at 469. Inasmuch as the Commission suffered no 'financial loss' from Haywood's misdeeds, any penalty the Commission might impose against Respondents in this action would, accordingly, be punitive in nature – and contrary to controlling legal authority on this point.

As already established above, neither Treasurer Mitchell nor the Committee had knowledge of Haywood's scheme. Nor did they ratify Haywood's embezzlement in any way. Rather, the Respondents initiated an internal review on their own accord and reported Haywood's criminal activity, to both law enforcement and the FEC, promptly after it was discovered. As a result, the Commission cannot penalize the Committee based on a theory of vicarious liability for Haywood's unauthorized and illegal acts.

Similarly, under North Carolina law, the courts review certain factors to determine when a principal is liable for the tortuous acts of an agent. "As a general rule, liability of a principal for the torts of his agent may arise in three situations: (1) when the agent's act is expressly authorized by the principal; (2) when the agent's act is committed within the scope of his employment and in furtherance of the principal's business; or (3) when the agent's act is ratified by the principal." *Hogan v. Forsyth Country Club Co.*, 79 N.C.App. 483, 491, 340 S.E.2d 116, 122 (1986), citing *Snow v DeButts*, 212 N.C. 120, 122, 193 S.E. 224 (1937).

Taking each of those factors, it is obvious that none of them are present for purposes of imposing liability on Respondents for Haywood's criminal actions. First, Haywood was certainly not 'authorized' either expressly or impliedly, to break the law and steal money from Respondents. Second, his actions were committed outside the scope of his employment and were *not* in furtherance of Respondents' business. The illegal acts of Respondents' Assistant Treasurer were not ancillary to some other 'authority' or responsibility. The duties for which

Haywood was retained and the responsibilities conferred upon Haywood by Respondents were the very duties Haywood disregarded by committing his illegal acts, thus breaching his fiduciary duty and destroying the principal-agent relationship.

Haywood was retained to act as a *fiduciary* on behalf of Respondents. A fiduciary relationship "exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Branch v. High Rock Realty, Inc.*, 151 N.C.App. 244, *251, 565 S.E.2d 248, **253 (2002); *see also Long v Vertical Techs., Inc.*, 113 N.C.App. 598, 604, 439 S.E.2d 797, 802 (1994) (defining fiduciary duty as one requiring good faith, fair dealing, and loyalty); *Dalton v Camp*, 353 N.C. 647, *650, 548 S.E.2d 704, **707 (2001).

Clearly, Haywood breached his duty of good faith and fair dealing and thus destroyed the principal-agent relationship in the process.

Finally, Respondents did not at any time ratify the acts that Haywood committed. It was only due to Respondents' diligence and care that Haywood's theft was uncovered at all and was immediately and duly reported to the appropriate agencies of the government with concurrent jurisdiction over these matters.

III. The Enforcement Action Against These Respondents Contravenes the Public Policy Imperatives of the Act, Which Encourage, Rather Than Discourage, Voluntary Compliance and Self-Reporting

The Office of General Counsel's enforcement action against these Respondents should be dismissed if for the simple reason that it contravenes public policy. A policy encouraging voluntary compliance and disclosure has been recognized in the law. *See generally Shotwell Manufacturing Co v United States*, 371 U.S. 341, 348 (1963)(policy supporting voluntary disclosure in the context of tax returns); *Connaire Inc v Dept. of Transportation*, 887 F.2d 723, 728 (6th Cir. 1990)(the national aviation system); *Carson v. Lewis*, 35 F.Supp.2d 250, 269 (E.D.NY 1999)(municipal investigation of police misconduct). Consistent with this policy, these Respondents took affirmative steps *not* required by the Commission to review the Committee's FEC reports and reconcile them to the Committee's books and records. The purpose was simply to insure that, prior to termination of the Committee, the FEC reports were accurate.

This voluntary compliance involved extraordinary expense and effort and was instigated *solely* by the Respondents and ultimately revealed serious crimes and violations of law by a trusted employee and official of the Committee – which were immediately reported to the proper agencies of the federal government.


To now punish Respondents for going to extra lengths, double-checking its reports and self-disclosing the information uncovered through their own efforts will send a clear signal that will not be lost on the regulated community: committees should not look too closely lest they discover violations that otherwise would not be known because such voluntary oversight and self-reporting may subject them to penalties for their honesty. That is the message being conveyed by this MUR and the RTB Finding. In lieu of punishing the Committee for its

honesty, the Commission should uphold the public policy encouraging voluntary compliance and disclosure.

CONCLUSION

For the reasons stated above and because neither the facts nor the law support the Commission's Finding of Reason To Believe that Respondents have violated the Act, Respondents respectfully move the Commission to dismiss the MUR and for such other necessary relief as deemed appropriate by the Commission.

Respectfully Submitted,



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Counsel for Respondents
Dole NC Victory Committee, Inc. and
Mike Mitchell, Treasurer

Submitted via hand delivery this 18th day of January, 2005

Mr. Larry Norton, General Counsel
Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

cc: Alexandra Dumas

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EXHIBITS TO RESPONSE TO RTB FINDING

1. Joint Fundraising Agreement, May 28, 2002
2. Statement of Organization, filed May 31, 2002
3. Affidavit of Respondent Michael W. Mitchell, Treasurer, January 18, 2005
4. Affidavit of Neal Rhoades, January 18, 2005
5. Dole North Carolina Victory Logistics Memorandum, May 24, 2002
6. Affidavit of Ted Koch, January 18, 2005
7. May 13, 2003 – Email from Mike Mitchell to Cleta Mitchell
8. June 11, 2003 – Letter from Cleta Mitchell to Jane Parks
9. May 14, 2003 -- Email from Cleta Mitchell to Mike Mitchell, Mark Stephens, Neal Rhoades, Carla Eudy, Allen Haywood, Ted Koch
10. May 14, 2003 – Letter from Allen Haywood to Jane Parks, FEC
11. May 19, 2003 – Email from Allen Haywood to Cleta Mitchell, Mike Mitchell, Mark Stephens, Neal Rhoades, Carla Eudy
12. May 14, 2003 – Email from Mike Mitchell to Cleta Mitchell
13. May 14, 2003 – Email from Mark Stephens to Cleta Mitchell
14. May 14, 2004 -- Email from Neal Rhoades to Cleta Mitchell
15. May 21, 2003 -- Letter from Cleta Mitchell to Allen Haywood and Carla Eudy
16. Amended Statement of Organization, filed May 29, 2003
17. July 15, 2003 – Letter from Cleta Mitchell to Jane Parks, Federal Election Commission (and electronic version of letter)
18. FEC Reports Index for Dole North Carolina Victory Committee
19. June 10, 2003 – Email from Cleta Mitchell to Mike Mitchell, Mark Stephens, Neal Rhoades, Bill Cobey
20. June 13, 2003 – Letter to Bobby Higdon, U.S. Attorney for Eastern District of North Carolina

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EXHIBIT 1

A JOINT FUNDRAISING AGREEMENT
OF
DOLE NORTH CAROLINA VICTORY COMMITTEE, INC.

ARTICLE 1

THE PARTIES

This Joint Fundraising Agreement ("Agreement") is made this 28th day of May, 2002 between the Dole 2002 Committee, Inc. ("DOLE 2002") and the North Carolina Republican Party / North Carolina Victory Committee ("NC GOP Victory") (collectively hereafter, "Parties").

The Dole North Carolina Victory Committee, ("DOLE NC VICTORY COMMITTEE") is a separate on-going committee created by DOLE 2002 and the NC GOP Victory to act as a fundraising representative on their behalf. DOLE NC VICTORY COMMITTEE is registered with the Federal Election Commission for the purpose of joint fundraising, the proceeds of which are shared by DOLE 2002 and the NC GOP Victory as provided herein.

Pursuant to 11 C.F.R. § 102 17(b)(1), the DOLE NC VICTORY COMMITTEE is a reporting political committee which collects all contributions, pays all fundraising costs associated with DOLE NC VICTORY COMMITTEE from gross proceeds and from funds advanced by the DOLE 2002 and NC GOP Victory, and disburses net proceeds to the NC GOP Victory Committee accounts (federal and state) and DOLE 2002 according to the allocation formula set forth below.

ARTICLE 2
THE AGREEMENT

This Agreement is entered into by DOLE 2002 and the NC GOP Victory in compliance with 11 C.F.R. § 102.17(c)(1) and represents the understanding of the Parties regarding DOLE NC VICTORY COMMITTEE.

ARTICLE 3
FUNDRAISING PROCEDURES

A. Depository Accounts

1. DOLE NC VICTORY COMMITTEE shall establish a depository account to be used solely for the receipt and disbursement of all contributions to DOLE NC VICTORY COMMITTEE that are permissible for the support of federal candidates under the Federal Election Campaign Act of 1971, as amended (2 U.S.C. § 431 *et seq.*) and political party

committees in the state of North Carolina pursuant to N.C. GEN. STAT. §163.278.5 *et seq* (1999-31, s.6(a); 2000-140, s.82).

2. The Parties agree that only contributions from individuals will be deposited into the depository account of DOLE NC VICTORY COMMITTEE, to be allocated as described below.

B. Allocation Formula

1. DOLE 2002 and NC GOP Victory hereby agree that DOLE NC VICTORY COMMITTEE, as fundraising representative, shall allocate all net proceeds from the DOLE NC VICTORY COMMITTEE according to the following formula:

- a) DOLE 2002 will receive the first \$1,000 of any individual contribution for the primary election;
- b) DOLE 2002 will receive the next \$1,000 of any individual contribution for the general election;
- c) NC GOP Victory 2002 Federal Account will receive the next \$5,000 of any individual contribution;
- d) NC GOP Victory 2002 State Account will receive any remaining individual contributions;

Any contribution to DOLE NC VICTORY COMMITTEE by an individual which upon allocation to DOLE 2002 shall be determined to exceed the contribution limit of that individual to DOLE 2002, as proscribed by 2 U.S.C. § 441a shall be re-allocated to the NC GOP Victory 2002 - Federal Account to the extent permitted by law;

Any contribution to DOLE NC VICTORY COMMITTEE by an individual which upon allocation to both DOLE 2002 and NC GOP Victory 2002 Federal Account shall be determined to exceed the contribution limit of that individual to each committee, as proscribed by 2 U.S.C. § 441a shall be distributed to the NC GOP Victory 2002 state account.

For the purposes of this formula, "net proceeds" shall not include cash advances to DOLE NC VICTORY COMMITTEE from NC GOP Victory or DOLE 2002 until all funds advanced to DOLE NC VICTORY COMMITTEE are repaid in full. In addition, "net proceeds" shall not include any advances in the form of office space, personnel, equipment, lists or other items of value to DOLE NC VICTORY COMMITTEE from NC GOP or DOLE 2002 until payment has been made in the usual and normal amount for these items to each committee which provided the items.

3. Pursuant to 11 C.F.R. § 102.17(c), any donor may designate his or her contribution for a particular participant. Any designated contribution which exceeds the contributor's limit to the designated participant will be re-allocated to the other participant(s) according to the formula set forth in this Agreement unless the donor designates in writing that the contribution is to be allocated in a manner other than that set forth in the allocation formula established herein, as

required by 11 C.F.R. § 102.17(c)(6)(ii). Notwithstanding the foregoing, NC GOP Victory and DOLE 2002 specifically agree that any contribution which is not so designated shall be distributed pursuant to the allocation formula set forth above. Each participant's share of net proceeds are not earmarked for any particular candidate or use and each participant shall use its share of its net proceeds in its sole discretion.

4. Any contributor may make his or her contribution payable directly to either NC GOP Victory or DOLE 2002. A system for notation or other indication that the contribution derives from this Agreement shall be mutually agreed upon by the Parties.

5. The timing and amounts of the distribution of net proceeds shall be upon the mutual agreement of both Parties.

6. The Treasurer of DOLE NC VICTORY COMMITTEE shall be a resident of North Carolina and shall be jointly designated and appointed by the Parties.

C. Expenses

All expenses of fundraising by DOLE NC VICTORY COMMITTEE will be paid by the DOLE NC VICTORY COMMITTEE from the gross proceeds of DOLE NC VICTORY COMMITTEE. Any additional funds needed by DOLE NC VICTORY COMMITTEE for fundraising shall come from NC GOP Victory and DOLE 2002 in proportion to the allocation formula defined in Article 3, part B above unless the Parties agree in writing to a different formula which meets the requirements of the Federal Election Campaign Act of 1971, as amended.

D Lists and Notification of Donor Information

1. The lists of names and addresses of contributors to DOLE NC VICTORY COMMITTEE shall become the joint property of NC GOP Victory and DOLE 2002. DOLE NC VICTORY COMMITTEE shall make available on at least a weekly basis to either of the Parties the names, addresses of donors, together with the amounts contributed and/or designated for the Parties resulting from joint fundraising efforts under this Agreement

2 NC GOP Victory and DOLE 2002 agree that none of the donor names generated pursuant to this Agreement shall be solicited for any recipient other than NC GOP Victory or DOLE 2002 during the earlier of the term of this Agreement or November 30, 2002, provided that this provision shall not apply to donors who have contributed to NC GOP Victory prior to this Agreement.

E. Liability

1. The NC Republican Party is a political party committee as defined in N.C. GEN. STAT. §163-278.6 (14) & (15). The officers, employees and agents of the NC Republican Party shall not be held personally liable for any debt, liability or obligation of the NC Republican Party or NC GOP Victory Committee. All persons, corporations, or other entities extending credit to,

contracting with, or having any claim against the NC Republican Party or NC GOP Victory Committee, may look only the funds and property of the NC GOP Victory for payment of any such contract or claim or for the payment of any debt, damages, judgment, decree, or any money that may otherwise become due or payable to them from the NC GOP Victory.

2. DOLE 2002 is a non-profit corporation incorporated in the State of North Carolina. Neither the candidate, Elizabeth H. Dole, nor any officer, director, staff, agents and/or employees of DOLE 2002 shall be held personally liable for any debt, liability or obligation of DOLE 2002. All persons, corporations, or other entities extending credit to, contracting with, or having any claim against DOLE 2002 may look only the funds and property of DOLE 2002 for payment of any such contract or claim or for the payment of any debt, damages, judgment, decree, or any money that may otherwise become due or payable to them from the DOLE 2002.

F. Miscellaneous

1. Parties agree that only vendors approved jointly by both NC GOP Victory and DOLE 2002 shall be engaged to provide services to or on behalf of DOLE NC VICTORY COMMITTEE.

2. Parties agree that all DOLE NC VICTORY COMMITTEE fundraising solicitations, activities and/or events will be approved in advance by the Parties.

3. DOLE NC VICTORY COMMITTEE will maintain the books and records of the DOLE NC VICTORY COMMITTEE on behalf of the Parties, provided that the Parties shall have access at all times to review or otherwise inspect said books and records. DOLE NC VICTORY COMMITTEE shall report at least weekly to NC GOP Victory and DOLE 2002 all income, expenses, and other information regarding the status and activities of DOLE NC VICTORY COMMITTEE in a format mutually agreed upon by the Parties

4. Neither NC GOP Victory nor DOLE 2002 shall obligate (with or without a contract) the DOLE NC VICTORY COMMITTEE for expenses in excess of \$5,000.00 without the prior approval of both Parties.

5. All staff and/or consultants providing fundraising services to the DOLE NC VICTORY COMMITTEE shall be compensated as agreed jointly by the Parties

6. This Agreement is not exclusive and nothing contained in this Agreement shall preclude either of the Parties hereto from entering into other Joint Fundraising Agreements as authorized by law.

7. The term of this Agreement shall continue through the North Carolina primary election in 2002 and, should Elizabeth H. Dole receive the nomination as the Republican candidate for the United States Senate from North Carolina, shall continue through the General Election in November 2002. In no case shall this Agreement extend beyond the date of the general election in November 2002 unless extended in writing by the Parties

8. This Agreement may be terminated by either of the Parties upon thirty (30) days written notice to the other at which time the allocation of funds received to date shall be finally made and concluded as per the provisions of this Agreement.

9. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original, but all of which together shall constitute one and the same Agreement.

10. This Agreement represents the entire agreement between the Parties hereto, and there are no other agreements, contracts or understandings between the Parties hereto with respect to the subject matter of this Agreement.

11. The titles of the paragraphs and subparagraphs of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

12. This Agreement shall not be amended except by written instrument signed by all the Parties to this Agreement.

The undersigned persons are authorized by the Parties to sign this Agreement and have read and fully understand the forgoing and it is their intent to be bound by the terms and conditions hereof.

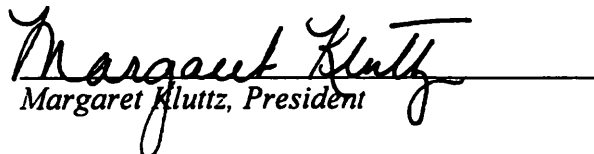
BY: NORTH CAROLINA VICTORY 2002 /
NORTH CAROLINA REPUBLICAN PARTY


Bill Cobey, Chairman

5/28/02
Date

-and-

BY: DOLE 2002 COMMITTEE, INC.


Margaret Kluttz, President

May 24, 2002
Date

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EXHIBIT 2

FEC
FORM 1STATEMENT OF
ORGANIZATION

(See instructions)

RECEIVED
FEC MAIL ROOM

MAY 31 P 12:41

Office Use Only

1 NAME OF
COMMITTEE (in full)(Check if name
is changed)Example If typing, type
over the lines.

12FE4M5

D O L E N O R T H C A R O L I N A V I C T O R Y C O M M I T T E E I N C

ADDRESS (number and street)

P O B O X 117926

(Check if address
is changed)

R A L E I G H

N C

27619-7926

CITY ▲

STATE ▲

ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS

COMMITTEE'S WEB PAGE ADDRESS (URL)

2. DATE

3. FEC IDENTIFICATION NUMBER ►

C

4 IS THIS STATEMENT

X

NEW (N)

OR

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete

Type or Print Name of Treasurer Mike Mitchell

Signature of Treasurer

Date

05 ' 28 ' 2002

NOTE Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g
ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.Office
Use
OnlyFor further information contact:
Federal Election Commission
Tel. Free 800-424-9630
Local 202 894-1100FEC FORM 1
(Revised 1/01)

FE1A0040.PDF

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FEC Form 1 (Revised 1/01)

Page 2

5 TYPE OF COMMITTEE (Check One)

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of
CandidateCandidate
Party AffiliationOffice
Sought

House

Senate

President

State

District

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of
Candidate

- (d) This committee is a

(National, State
or subordinate) committee of the(Democratic,
Republican, etc.) Party.

- (e) This committee is a separate segregated fund.

- (f) ☒ This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee.

6 Name of Any Connected Organization or Affiliated Committee

(SEE ATTACHED PAGE FOR ADDITIONAL
PARTICIPANTS)

D.O.L.E. 2002 COMMITTEE INC.

Mailing Address

P.O. BOX 21019

SALISBURY

NC

28145

CITY ▲

STATE ▲

ZIP CODE ▲

Relationship

JOINT FUNDRAISING PARTICIPANTS

Type of Connected Organization:

Corporation

Corporation w/o Capital Stock

Labor Organization

Membership Organization

Trade Association

Cooperative

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FEC Form 1 (Revised 1/01)

Page 3

Write or Type Committee Name

Dole North Carolina Victory Committee, Inc.

- 7 Custodian of Records. Identify by name, address (phone number - optional) and position of the person in possession of committee books and records.

Full Name A L L E N H A Y W O O DMailing Address 3901 BARRETT DRSUITE 12505R A L E I G H N C 27605

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

ASSISTANT TREASURER Telephone number 919-571-8773

- 8 Treasurer. List the name and address (phone number - optional) of the treasurer of the committee, and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer M I K E M I T C H E L LMailing Address 2500 FIRST UNION CAPITOL CENTERPOST OFFICE BOX 2611R A L E I G H N C 27602-2611

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

TREASURER Telephone number 919-821-1220Full Name of Designated Agent A L L E N H A Y W O O DMailing Address P O B O X 17926R A L E I G H N C 27619-26

Title or Position ▼

CITY ▲

STATE ▲

ZIP CODE ▲

ASSISTANT TREASURER Telephone number 919-571-8773

FE ANS PAF

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FEC Form 1 (Revised 1/01)

Page 4

9. Banks or Other Depositories: List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.

Name of Bank, Depository, etc

FIRST UNION NORTH HILLS

Mailing Address

4224 SIX FORT ROAD

RALEIGH NC 27619

CITY ▲

STATE ▲

ZIP CODE ▲

Name of Bank, Depository, etc.

Mailing Address

CITY ▲

STATE ▲

ZIP CODE ▲

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**Statement of Organization
Attachment**

North Carolina Republican Party
P.O. Box 12905
Raleigh, NC 27605

28044183698

EXHIBIT 3

28044183699

NORTH CAROLINA

AFFIDAVIT OF MICHAEL W. MITCHELL

WAKE COUNTY

I, Michael W. Mitchell, of lawful age do hereby affirm and state:

1. I am a resident and citizen of the State of North Carolina and an attorney practicing law in Wake County, North Carolina.

2. I am a lawyer in good standing with the State Bar of North Carolina. I am admitted to the practice of law in and before the Supreme Court of the State of North Carolina. I am admitted to practice before the United States Supreme Court, the Fourth Circuit Court of Appeals, and all federal district courts in the State of North Carolina.

3. My area of practice is civil commercial litigation and medical malpractice defense.

4. I am not an expert or practitioner in the area of state or federal campaign finance law.

5. I was asked in the spring of 2002 by a friend and former law school classmate, Neal Rhoades, if I would be willing to serve as treasurer of a joint fundraising committee which was being established for the purpose of raising and disbursing funds to the Elizabeth Dole for United States Senate campaign and the North Carolina Republican Party, particularly the North Carolina Victory 2002 Committee, to which Neal Rhoades was a consultant.

6. Neal Rhoades had previously requested that I serve as Trustee of the North Carolina Victory 2000 Committee during the 2000 general election, which I had agreed to do and did serve in that capacity.

7. I was not familiar with a "joint fundraising committee," and so advised Mr. Rhoades when he asked if I would serve as treasurer.

8. I was advised that a joint fundraising committee is a committee established under the rules of the Federal Election Commission ("FEC"), and that my role would not be that of day-to-day bookkeeper nor would I have the responsibility for preparing the FEC reports of the joint fundraising committee.

9. In my capacity as Trustee of the North Carolina Victory 2000 committee, I was likewise not responsible for the day-to-day bookkeeping, accounting or compliance functions of the Victory 2000 committee. There were paid professionals with expertise in the field who were responsible for the bookkeeping, accounting, reporting and compliance duties of the Victory 2000 committee.

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10. I was advised that my duties on behalf of the joint fundraising committee would be similar to those duties I had performed previously for the Victory 2000 committee: to serve as the North Carolina resident and advisor to the representatives to and participants in the committee, and to serve as a liaison between the Dole campaign and the State Party for purposes related to the joint fundraising committee. I was also the initial incorporator to help establish the joint fundraising committee.

11. I was advised that there are complicated allocation ratios and reporting responsibilities associated with a joint fundraising committee which would necessitate a professional person with experience and skill in those areas to be responsible for the books, records and accounting as well as compliance duties of the joint fundraising committee. When I became the treasurer for the joint fundraising committee, I did not receive any materials from the FEC describing or explaining the accounting and reporting requirements for joint fundraising committees.

12. I made known that I did not have the time or the expertise to manage the affairs of the joint fundraising committee and was assured that a professional individual was being retained for that purpose.

13. I was informed that Allen Haywood was to be designated the assistant treasurer of the joint fundraising committee, whose job it would be to manage the financial affairs of the committee, including tracking receipts and contributions, expenses and disbursements of the committee, writing checks and disbursing funds to the participating committees, and reporting all information to the FEC.

14. Allen Haywood was described to me by various people as being highly qualified to serve as assistant treasurer of the joint fundraising committee. He was said to have served as the treasurer or controller of McCain for President campaign, that he was a professional in the field of federal campaign finance law, FEC reporting, and FEC regulations with over a decade of professional service in the field.

15. I was further advised that because the joint fundraising committee was not an actual "campaign committee," it had no employees. Rather, the committee would retain outside vendors and consultants to perform the work of the committee which was solely to raise funds for the Elizabeth Dole for Senate Committee and the North Carolina Republican Party / North Carolina Victory 2002 committee of the state party.

16. At some point, I became aware that the fundraising consultant hired to manage the fundraising events and efforts of the committee was Eudy Nelson & Associates from Washington, D.C., who I was told was a nationally known and well-respected fundraising consultant with knowledge and experience regarding joint fundraising committees.

17. I was also advised that Allen Haywood had come highly recommended by Carla Eudy, the fundraising consultant and owner of Eudy Nelson & Associates.

18. Mr. Haywood was appointed Assistant Treasurer of the Committee and was responsible for preparing and filing the Committee's FEC reports. He prepared a memo requesting the committee's electronic password from the FEC and forwarded that to me for signature in order that he could prepare and file the committee's FEC reports. I signed the memo that he submitted to me for signature requesting the FEC provide to Mr. Haywood the password for electronic filing of the committee's reports.

19. Mr. Haywood utilized the electronic password issued to him by the FEC for filing reports. He did not submit those reports to me in advance, and Mr. Haywood filed all reports without my receiving notice of the content, until such time as he was removed as assistant treasurer of the committee. It is my understanding that under the FEC system for electronic filing, my actual signature is not required for these reports.

20. Mr. Haywood was charged with the responsibility of filing accurate reports and was relied upon by the committee for that purpose. That is the job he was paid to perform and the purpose of his being retained by the committee in the first place.

21. Neither I nor any of the representatives of the committee participants had any reason to believe that Mr. Haywood would do anything other than perform his services in a professional manner consistent with his reputation.

22. I relied upon a person (Mr. Haywood) with a good reputation and outstanding credentials to discharge the obligations of the position of assistant treasurer.

23. I discharged my duties as treasurer to best of my ability by entrusting certain responsibilities to an individual of excellent background and credentials.

24. On May 13, 2003, I received a telephone call from Jane Parks of the Federal Election Commission who advised me that the FEC had not received sufficient information in response to a question posed earlier to Mr. Haywood regarding employer and occupation information of donors. I immediately sent an email to the attorney for the committee, Cleta Mitchell, advising her of the telephone call from the FEC.

25. Cleta Mitchell advised that she would contact Ms. Parks at the FEC and find out what information was being sought and what was missing.

26. Cleta Mitchell contacted Jane Parks at the FEC and then called me back to advise that she had spoken to Jane Parks and would monitor the situation until it was resolved satisfactorily.

27. Allen Haywood advised me and others in writing on May 19, 2003, that he had confirmed with Jane Parks of the FEC that she had completed her view of amendments and responses to her questions and that "she is satisfied with the response and has dropped the matter."

28. Notwithstanding the fact that Jane Parks on behalf of the FEC advised both Mr. Haywood and Ms. Mitchell that she was "satisfied" with the responses from Mr. Haywood and had no other outstanding issues with the committee, I nonetheless agreed with Ms. Mitchell that we should hire an independent review of the books and records to insure that all the committee's FEC reports were in order.

29. My exact words were: "I am in favor of going the extra mile to keep Senator Dole's good reputation clean of any FEC inquiry, no matter how minor. I think we need to know whether Allen's amendment to the report, and future amendment to his letter, would be enough to solve this problem. Perhaps we should have a joint conference call with Jane Parks so that we have a meeting of the minds on what they need, and when, and to show a satisfactory level of attention to the FEC's concerns...I believe that an amendment of Allen's prior letter may not be enough...."

30. When the review of the bank records and accounts of the committee was commenced, it became apparent that Allen Haywood had stolen funds from the committee and falsely reported to the FEC the amount of receipts and disbursements in order to conceal his theft.

31. We took immediate steps to remove Allen Haywood from further contact with or responsibility for the committee by removing his name as assistant treasurer and taking over all the books and records of the committee.

32. During early June, 2003, representatives of the committee met with Sen. Elizabeth Dole to apprise her of the theft of funds from the joint committee. She instructed that we were to report the theft to the appropriate agencies as soon as possible, which is exactly what happened.

33. On June 11, 2003, our counsel, Cleta Mitchell, advised the FEC in writing that we were, in fact, involved in an internal review of all the records of the committee and that Allen Haywood had been removed and replaced as assistant treasurer and custodian of records.

34. Also on that same day, June 11, 2003, I met with the FBI and representatives for United States Attorney for the Eastern District of North Carolina in Raleigh to report the theft of funds from the committee. Also in the meeting were Neal Rhoades, Mark Stephens (representing Dole 2002 committee), and Bill Cobey (representing the North Carolina Republican Party).

35. Approximately one week after the meeting with the representatives for the U.S. Attorney and the FBI in Raleigh, we were contacted and advised that the case would be transferred to the Office of Public Integrity in Washington, D.C., which did, in fact, occur.

36. Our counsel and our external auditor worked with the Department of Justice to provide information to them for the prosecution of Allen Haywood for his embezzlement of funds from the committee.

37. Our counsel and external auditor also worked diligently to review all the FEC reports to be sure that any errors or omissions were corrected. We were working under a tight time frame to complete the internal review, amend the previously filed reports and be ready to file accurate reports no later than the next reporting date following our discovery of the theft, which was July 15, 2003.

38. We filed accurate reports to the best of our knowledge and information on July 15, 2003, and corrected the previously filed erroneous reports prepared by Mr. Haywood to conceal his theft of funds.

39. At no time following the telephone call on May 13, 2003 from Jane Parks at the FEC have I received any communication(s) or inquiries from the Commission regarding Mr. Haywood's crimes against the committee until the fall of 2004 when the committee was notified of an FEC audit and then the notice of this enforcement action which does not appear to be directed against Mr. Haywood, the perpetrator of these crimes.

40. In light of my very limited knowledge and experience in the area of federal campaign finance law, the FEC regulations, and specifically, the rules governing joint fundraising committees, I exercised reasonable care by relying on a professional in the field of FEC compliance. This was an individual with an excellent reputation and impeccable credentials in FEC compliance on whom I could reasonably rely to discharge the duties of the office of assistant treasurer.

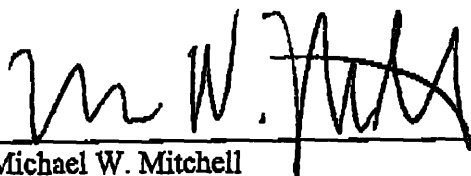
41. Because of his expertise in this field, Mr. Haywood knew exactly how to conceal his illegal actions. The reason his theft was ultimately uncovered was because of the commitment of the committee, its counsel and its representatives to insuring the total accuracy of the FEC reports which is what led to the discovery of Mr. Haywood's crimes.

42. We voluntarily reported the theft to the Department of Justice and the Commission in order to insure that Mr. Haywood's violation of law was not compounded by any additional errors or violations by the committee after discovery of the theft, and to insure that his prior bad acts were not ratified in any manner by me or any other representative of the committee.

43. Mr. Haywood's criminal and unlawful conduct was not authorized or ratified by me or any other person associated with the committee.

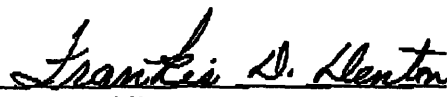
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Further Affiant Sayeth Not.

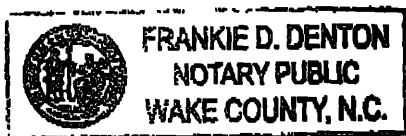

Michael W. Mitchell

Before me this 18th day of January, 2005, personally appeared Mr. Michael W. Mitchell and swore under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.

SEAL


Notary Public

My Commission Expires: April 24, 2006



28044183706

EXHIBIT 4

Affidavit of Neal Rhoades

ss:)
 County of)
 State of North Carolina)
)

I, Neal Rhoades, of lawful age do hereby affirm and state

- 1 I am a citizen and resident of the state of North Carolina.
- 2 During 2002, I served as a consultant to the North Carolina Victory 2002 committee, a separate reporting committee of the North Carolina Republican Party tasked with responsibility of helping to elect Republican candidates to state and federal office at the 2002 general election, and as a consultant to the Elizabeth Dole for Senate Committee, Inc.
3. I had served on the NC Victory staff during the 2000 general election.
- 4 I requested that Mike Mitchell serve as Trustee of the North Carolina Victory 2000 committee. Mr. Mitchell is a friend and law school classmate of mine who is a practicing attorney in Raleigh, North Carolina
- 5 Mr. Mitchell agreed to serve and did serve as Trustee of the North Carolina Victory 2000 committee.
6. In that capacity, Mr. Mitchell reviewed and signed checks but did not have responsibilities for the day-to-day accounting, procedures, bookkeeping, compliance or reporting for the North Carolina Victory 2000 committee.
- 7 In early 2002, the White House began making plans for political travel and campaign appearances by President George W. Bush, Vice-President Dick Cheney and other administration personnel for and on behalf of candidates for office during the general election in November, 2002
- 8 I was involved in the development of the political appearances of various administration officials in the state of North Carolina in 2002 on behalf of the Dole For Senate Committee.
9. The first political campaign appearance by President Bush following the September 11, 2001 terrorist attacks on the United States was a trip to North Carolina in February, 2002 to benefit the Senate campaign of Elizabeth Dole, candidate for the US Senate from North Carolina, Congressman Robin Hayes' reelection committee and the North Carolina Republican Party. The event was styled "North Carolina's Salute to George W. Bush"
10. The national fundraising for the Dole for Senate campaign and the management of the "Salute" event was to be handled by Carla Eudy, a prominent national Republican fundraising consultant from Washington, D.C. who owned the firm Eudy Nelson & Associates ("EN & A")

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11. Carla Eudy advised the Dole For Senate Campaign and NC Victory campaign that she had substantial experience with joint committees and joint committee events (having been involved with the Republican House/Senate Dinner among others), and that the best way to conduct events of this type was to create and establish a joint fundraising committee under the regulations of the Federal Election Commission

12 I had no prior experience with joint fundraising committees nor, to my knowledge, did anyone else involved with the North Carolina Victory 2002 committee or the Dole 2002 committee, so we relied on the information provided to us by Carla Eudy regarding how such entities operated.

13 A joint fundraising committee, the North Carolina's Salute to George W. Bush Committee ("Salute Committee") was established for the presidential event and was created in accordance with the FEC regulations for such committees.

14 We were advised that the bookkeeping and accounting procedures for a joint fundraising committee were somewhat complex and required a person of skill and experience to manage the compliance responsibilities of the joint fundraising committee. Carla Eudy recommended Allen Haywood to serve as the accountant and compliance person for the joint fundraising committee.

15 I did not personally know Allen Haywood prior to 2002 but Carla Eudy told us of his background as the controller to the McCain presidential campaign and his work for more than ten years for other presidential campaigns, federal committees and party committees including the National Republican Senatorial Committee. I also learned that Allen Haywood worked from an office within the firm of Eudy Nelson & Associates.

16. I was also advised by Carla Eudy that Mr. Haywood would serve as the controller or treasurer for the Salute Committee for a fee of \$6,000.

17. The Salute committee (and the Dole NC Victory Committee described in paragraph 19 below) were not campaign committees. They were 'turn-key' operations that had no employees and were managed by Eudy Nelson & Associates to be responsible for all aspects of the fundraising events and efforts. Allen Haywood served as the compliance consultant/vendor for the committees.

18 After the Salute event was over, there were discussions about creating a new and ongoing joint fundraising committee to handle national fundraising events for the rest of the campaign to benefit the Dole 2002 committee and the state party.

19. In late May, 2002, the Dole for Senate campaign and the NC GOP Victory campaign began the process of creating the new joint fundraising committee called the "Dole NC Victory Committee." Carla Eudy became the consultant to the new committee, reprising her role from the "Salute" Committee, and she recommended that Allen Haywood perform essentially the same duties that he performed for the Salute committee for the new committee.

20. The Dole NC Victory Committee was to exist only through the general election of 2002 for the sole purpose of conducting fundraising activities and events to benefit the Dole campaign and the NC state party. No other activities or events were conducted by the committee after the general election in 2002.

21. I was informed that the Dole NC Victory Committee would require a Treasurer. On behalf of the leadership of the Dole for Senate Campaign and the NC Victory campaign, I recruited Mike Mitchell to serve as treasurer of the Dole North Carolina Victory Committee. I recruited Mike because I knew he was a person of impeccable integrity, he resided in the state, and he was familiar with the NC Victory effort having served in the NC Victory 2000 campaign.

22. Mike advised me that he was not familiar with a joint fundraising committee or any of the compliance requirements of such a committee and that he did not have time to manage the day-to-day accounting or management functions of the committee.

23. The participants in the new joint fundraising committee were the Dole 2002 Committee, Inc and the North Carolina Republican Party / North Carolina Victory 2002 Committee. Mike Mitchell was designated as treasurer and Allen Haywood was designated the Assistant Treasurer and Custodian of Records.

24. The purpose of Allen Haywood's involvement with the committee was to manage the accounts, process contributions and disbursements and make certain that the FEC regulations were followed and all receipts and expenditures reported timely to the FEC.

25. In May, 2003, Cleta Mitchell, counsel to the Dole NC Victory Committee, and Mark Stephens, Campaign Manager for the Dole for Senate Committee informed me that some questions had arisen regarding Mr. Haywood's reports to the FEC.

26. In late May, 2003, Ms. Mitchell informed me that Mr. Haywood had been discovered as having stolen funds from the committee and that he had concealed his theft by falsifying the FEC reports.

27. During the first week of June, 2003, I participated with representatives of the committee in a meeting with Sen. Elizabeth Dole to apprise her of the theft of funds from the joint committee. She instructed that we were to report the theft to the appropriate agencies as soon as possible, which is exactly what happened.

28. Immediately following the meeting, on behalf of the committee, I scheduled a meeting between representatives of the Dole NC Victory Committee and representatives of the US Attorney's office for the Eastern District of North Carolina.

29. On June 11, 2003, our counsel, Cleta Mitchell, advised the FEC in writing that we were, in fact, involved in an internal review of all the records of the committee and that Allen Haywood had been removed and replaced as assistant treasurer and custodian of records.

30. On that same day, Mark Stephens, Bill Cobey, Mike Mitchell and I met with representatives of the U S Attorney's office and the FBI to report the embezzlement committed by Mr. Haywood against the committee

31. Upon the discovery of the theft, all persons associated with the Committee made every effort to honestly and forthrightly assess the situation regarding the committee and Mr. Haywood and to report to the proper authorities all information required by law.

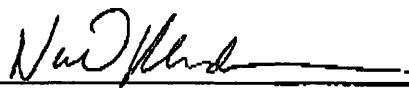
32. At no time after the discovery of the embezzlement did any person associated with the committee suggest or engage in any action(s) to conceal or deny Mr. Haywood's criminal activities or his violations of federal campaign finance law

33. I believe that in conjunction with legal Counsel Cleta Mitchell, Mike Mitchell, Bill Cobey, Mark Stephens, and I have done everything within our power to insure that Mr. Haywood's illegal conduct was reported and investigated as soon as possible, that all information provided to the FEC was amended to insure accuracy and that no additional violations occurred

34. I further believe that those associated with the committee had ample reason to trust and rely on Allen Haywood as a person of impeccable credentials and reputation for knowledge of the compliance requirements of joint fundraising committees and the reporting requirements associated with such committees under the FEC regulations. It was clear from the outset of the relationship with Mr. Haywood that his function was to insure the complete and proper compliance with all FEC regulations and requirements.

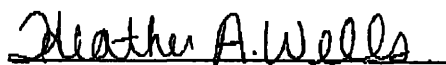
35. Mr. Haywood stole funds from the committee and deliberately concealed his crimes by failing to report the finances of the committee honestly and properly to the FEC. The purpose of retaining him was to serve the accounting and compliance functions but he breached his obligations and his fiduciary duty to the committee by his illegal actions

Further Affiant Sayeth Not


Neal Rhoades

Before me this 18 day of January, 2005, personally appeared Mr. Neal Rhoades and swore under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief

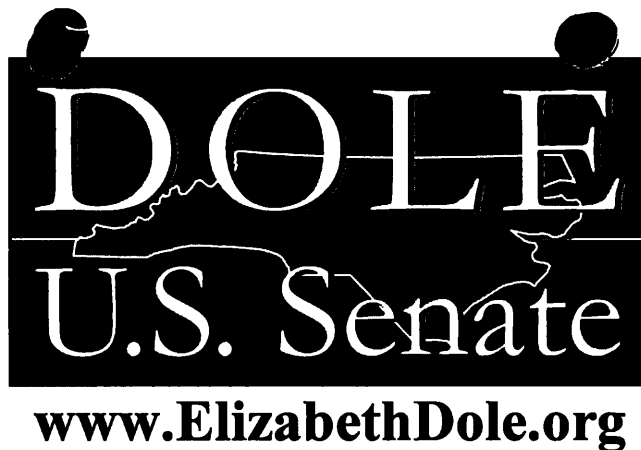



Notary Public

My Commission Expires April 6, 2009

28044183711

EXHIBIT 5



Memo

To: Mark
From: Randy
Date: May 24, 2002
Re: Dole NC Victory Committee Logistics
Cc: Neal, Clela, Carla, Ted, Alan

Following is a description of how the logistics for the Dole NC Victory Committee (joint committee between Dole 2002 and NCGOP) will operate based on our conference call Friday and subsequent conversations

- ☐ P.O. Box 2008, Salisbury, NC 28145 will be dedicated to receiving contributions related to the Dole NC Victory Committee (except for special events for which the joint committee will / may establish a different address or PO Box).
- ☐ Bob Kearley, Dole 2002 Committee Staff, will check this box daily (morning) beginning Tuesday, May 28.
- ☐ Contributions will be sorted/categorized, photocopied and faxed by Bob to Allen Haywood (ass't treasurer and custodian of records of Dole NC Victory Committee) for entry into Campaign Manager. Alan will be responsible for all FEC reporting, reattribution/redesignation procedures, FEC filing, and other official reporting requirements.
- ☐ Contributions will be deposited by Bob into the First Union bank account, with assistance from Ted as needed.
- ☐ Allen will also be responsible for paying expenses of the joint committee and reimbursing expenses advanced by the participants (Dole 2002 and NC GOP Victory) in proportion to the allocation ratios of the formula and actual proceeds
- ☐ Regarding expenses. We should decide specifically what expenses are going to be absorbed by joint committee re. staff, office, computer, etc. --- and then create

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Paid for by the Dole 2002 Committee, Inc

28044183712

a system for keeping track of those actual amounts in order to be able to invoice and get reimbursed – and make sure we maintain the legal proportions.

- ☐ Daily tracking reports will be prepared by Bob, with assistance from Ted as needed, and distributed to the recipients of this memo along with any fundraising point-of-contacts for Dole NC Victory. *NOTE: The fundraising agreement provides that the joint committee will be responsible for maintaining the books and records and accounts of the joint committee, providing weekly reports to the participants (that includes both the Dole campaign AND the NCGOP Victory 2002 Committee). The reports can be more frequent if necessary. The main point to keep in mind is that this must be JOINT and the state party must be kept 'in the loop' specifically either through Neal or some other designated person.*

Action Items:

- ☐ Deposit slips for First Union account to Ted/Bob (from Allen?)
- ☐ Decisions on allocating, tracking, and paying expenses. Separate meeting with Allen, Mark, Neal, Cleta, others?
- ☐ Ted and Bob get together to develop daily reporting templates

28044183713

EXHIBIT 6

28044183714

Affidavit of Ted Koch

ss:)
 City of Alexandria)
 State of Virginia)
)

I, Ted Koch, of lawful age do hereby affirm and state:

1. I am a resident and citizen of the State of Virginia.
2. I am a member of Koch & Hoos, LLC and provide professional services in the area of campaign finance reporting and compliance for federal political committees.
3. I was retained by the Dole 2002 Committee, Inc. to manage the contributions and compliance issues and to prepare FEC reports for the committee, which was the principal authorized committee of the Elizabeth Dole for United States Senate campaign in North Carolina in 2002.
4. I knew Allen Haywood for eleven years prior to 2002 and worked with and for him in the area of federal campaign finance compliance involving numerous federal political committees before 2002.
5. Allen Haywood was, prior to 2002, one of the most well-respected professionals in the field of FEC compliance, accounting and reporting.
6. I was the treasurer for the North Carolina's Salute to George W. Bush Committee ("Salute Committee") and Allen Haywood was the professional consultant responsible for actually managing the accounting, receipts, and disbursements for the Salute Committee and preparing its FEC reports.
7. I had no reason to suspect that Allen Haywood would ever do anything improper with respect to the Salute Committee nor did I suspect at the time that he was doing anything improper or illegal.
8. Allen Haywood told me that he was being paid a one-time fee of \$6,000 for his professional services to and for the Salute Committee.
9. Following the presidential visit to North Carolina to raise funds for the Salute Committee, I was aware that a separate joint fundraising committee, the Dole North Carolina Victory Committee ("the Committee"), was being established.
10. I was aware that Carla Eudy was the fundraising and events management consultant responsible for the fundraising for the Dole North Carolina Victory Committee and that Allen Haywood was to handle the accounting and FEC compliance functions for the Committee, just as they had both done for the Salute Committee.

28044183715

11. Because both committees were established to help raise funds for the Dole campaign, I worked with Allen Haywood to process the disbursements to the Dole 2002 Committee and was responsible for making certain that the contributions through the joint fundraising committees to the Dole campaign were in compliance with federal law and were duly reported to the FEC.

12. During the course of the Committee's existence until the spring of 2003, I had no reason to suspect that Allen Haywood was stealing funds from the Committee.

13. I had worked with Allen Haywood often on a day to day basis during 2002 and did not observe any conduct that made me suspect him of any wrongdoing.

14. I did occasionally help Allen Haywood, upon request, prepare and electronically file FEC reports for the Committee and responses to Requests for Additional Information ("RFIAI") letters from the FEC in order to assist the Committee with its filing requirements.

15. I spoke with Allen Haywood several times about matters involving the Committee but did not suspect there were any problems or wrongdoing in process.

16. If I had suspected or known of any theft or wrongdoing being committed by Allen Haywood, I would have immediately reported that to the treasurer and others related to the Committee.

17. In April 2003, I had a conversation with Cleta Mitchell, counsel to the Committee, regarding the termination of the Committee and I followed up with Allen Haywood in an effort to ascertain the status of the Committee and when he thought he might be able to terminate its existence.

18. Allen Haywood advised that he was awaiting receipt of a reimbursement check from the Republican National Committee in order to terminate the Committee's existence.

19. At times, I reviewed portions of the Committee's FEC reports prior to May, 2003 but did not compare the FEC reports to the Committee's bank records or accounts.

20. In late May, 2003, I was contacted by Cleta Mitchell and was advised that the Committee had decided to retain me to review the Committee's books, records, bank accounts and FEC reports, to reconcile the accounts and to make certain that all the FEC reports that had been filed were, in fact, accurate and correct.

21. I began the internal review by contacting Allen Haywood and requesting that he deliver or furnish to me the financial records of the Committee in order that I could perform the services I had been retained by the Committee to perform.

22. Allen Haywood was reluctant to deliver the complete books and records to me and it took several days for me to actually obtain many of the records.

23. Allen Haywood advised me that there were missing bank statements and no cancelled checks for the Committee. I contacted the First Union Bank and ordered duplicate bank records for the Committee in order to conduct my internal review.

24. On May 20, 2003, I went to Allen Haywood's office located in the offices of Eudy Nelson and Associates.

25. The purpose of my trip to Allen Haywood's office was to pick up the Committee's checkbook and other records which he had not provided to me.

26. Upon reviewing the checkbook, I noted several check stubs with large disbursements noted in the check register as having been for "postage".

27. A number of the "postage" disbursements were dated after the general election in 2002 and would have been after the date when any fundraising invitations or letters would have been sent for or by the Committee.

28. In the back of the checkbook was a sheet of paper with no title but which listed dates and amounts only. No payee was listed for any of the amounts.

29. The amounts and dates coincided with the entries into the check register for "postage".

30. I immediately contacted Cleta Mitchell and went to her office to disclose what I had discovered.

31. It was readily apparent to both of us (Cleta Mitchell and myself) that Allen Haywood had probably been the payee for the amounts listed as "postage".

32. While I was sitting in her office, Cleta Mitchell called Allen Haywood at his home and also on his cell phone but she did not reach him. She left messages for him on both phone numbers. She advised Allen that he was NOT to come to my house the next day, which he had been planning to do ostensibly to bring additional Committee records and to use my computer to make entries into the Committee's compliance software.

33. Cleta Mitchell also left in her message to Allen Haywood that it appeared from the checkbook that he had been engaged in wrongful activity regarding the Committee and that he needed to deliver all the books and records of the Committee to her office by the close of business the following day.

34. Following the discovery of the large disbursements, I was able to get the bank records and confirm that the payee on the 'postage' disbursements was Allen Haywood.

35. I conducted a complete review of all the records of contributions to and disbursements from the Committee's bank account which took several weeks. I compared the accounts to the FEC reports and prepared the necessary amendments to accurately reflect all activities of the joint fundraising committee.

36. I discovered that Allen Haywood had also deposited contributions into the Committee's account that were actually intended for and were the property of another joint fundraising committee, the Dole Victory Committee ("DVC").

37. Allen had deposited the DVC funds into the Dole NC Victory Committee account and then had written checks to himself against these funds.

38. After discovering the embezzlement from the Committee's account and the theft of DVC funds, I was also instructed to perform the same review of the Salute Committee's account even though the Salute Committee had already been terminated by the FEC.

39. I discovered that Allen had also stolen funds from the Salute Committee which would have gone undetected had I not obtained the bank records and reviewed all the deposits and disbursements from the account.

40. I prepared and filed amended FEC reports for both the Salute Committee and the Dole NC Victory Committee which accurately reflected all the activities into and out of both committees' accounts.

41. It took several weeks longer than planned to complete the internal review of the Committee's accounts and records because of the difficulty of reconciling the credit card contributions to the Committee. There were several hundred credit card contributions that had been made to or authorized by donors to the Committee, many of which were never processed by Allen Haywood. The task of determining which of the credit card contributions had been actually received by the Committee and which ones had never been processed was a time consuming effort but was necessary in order to insure that the FEC reports accurately reflected the amount of contributions actually received in order to report correct amounts and information to the FEC in accordance with the FEC regulations.

42. I completed the internal review and preparation of the 2d Quarterly Report for 2003 and the amendments to all prior FEC reports barely in time to file all of them on the next reporting date, July 15, 2003.

43. All FEC reports for both committees were corrected and filed with the FEC by July 15, 2003 and accurately reflect, to the best of my knowledge and information, the transactions of both committees' accounts.

44. I worked with Cleta Mitchell and furnished to the Department of Justice all necessary books and records of both committees in order to assist the committees in redressing the improper activity.

45. I have furnished to the FEC through Cleta Mitchell the identical documents and records produced to the Department of Justice in order for the FEC to conduct an audit of the Committee.

46. I have not been contacted by the FEC's audit division since the initial audit meeting on October 26, 2004, other than to provide access for the auditors to the Committee's compliance software account. I had been advised by the auditors that they would be contacting Cleta Mitchell and me for purposes of obtaining the rest of the Committee's books and records but I have received no such contact or request for the records.

47. I believe that the Committee, the treasurer and the representatives of the participants in the Committee discharged their duties and responsibilities in the best manner possible and that none of us could have or would have ever anticipated that Allen Haywood would misappropriate funds from any committee that had hired him.

48. I was completely shocked to uncover the theft Allen Haywood committed because I had known him for many years, had worked with him and knew him to be a reliable and trustworthy individual who was extremely knowledgeable and skilled in FEC compliance.

49. The Committee had adopted a set of procedures which were memorialized in a memo and which set forth how the Committee was to operate. The Committee sponsored numerous fundraising events in various cities in North Carolina and established several different solicitations and response locations. As the Committee's fundraising events and activities increased, Allen Haywood assumed responsibility for processing all contributions as well as handling the disbursements to the participants. His knowledge of joint fundraising committees and the allocation ratios that were to be applied to disbursements and expenses was important to the Committee's compliance requirements, so it was reasonable that the participants relied on him to manage the Committee's accounting and reporting responsibilities.

50. I do not believe that the Treasurer, Mike Mitchell, or any person associated with either of the two joint fundraising committees acted in an unreasonable or irresponsible manner. Rather, the decision to retain me to review all the books and records to make certain the FEC reports were correct was above and beyond the level of commitment to compliance when compared to those involved with other political committees.

Further Affiant Sayeth Not.

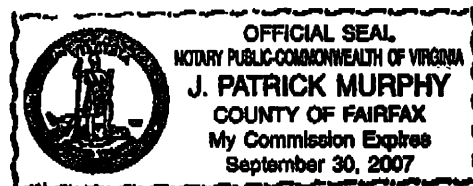
Theodore W. Koch
Ted Koch

Before me this 18th day of January, 2005, personally appeared Mr. Ted Koch and swore under penalty of perjury that the above and foregoing statements are true and correct to the best of his knowledge and belief.

S E A L

J. Patrick Murphy
Notary Public

My Commission Expires: 9/30/07



28044183720

EXHIBIT 7

Mike Mitchell

From: Mike Mitchell
Sent: Tuesday, May 13, 2003 3 37 PM
To: 'cmitchell@foleylaw.com'
Subject: FEC

I just rec'd a phone message from Jane Parks at the FEC about the filings of the Dole North Carolina Victory Committee Inc. She is complaining about omission of employer names, and occupations, of donors. Her message says that they will send the matter to their general counsel unless they receive an electronically-filed explanation by May 23. Can you call her and let me know that everything is under control? Her number is

thanks

Michael W. Mitchell
Smith Anderson Blount Dorsett Mitchell & Jernigan
P.O. Box 2611
Raleigh, N.C. 27602-2611

28044183721

28044183722

EXHIBIT 8

FOLEY ■ LARDNER
ATTORNEYS AT LAW

FOLEY & LARDNER
WASHINGTON HARBOUR
3000 K STREET, N W , SUITE 500
WASHINGTON, D C 20007 5143
202 672 5300 TEL
202 672 5399 FAX
www foleylardner com

June 11, 2003

WRITER'S DIRECT LINE
202 295 4081
cmitchell@foleylaw com EMAIL

CLIENT/MATTER NUMBER
042374 0101

VIA ELECTRONIC MAIL

Ms. Jane Parks
Reports Analyst
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Dole North Carolina Victory Committee, Inc. C00378117

Dear Ms. Parks:

This is to follow-up on our telephone conversation of May 19, 2003, regarding the Dole-North Carolina Victory Committee, Inc., a joint fundraising committee of the Dole 2002 Committee, Inc. and the North Carolina Republican Party. ("the Committee"). As I indicated in our telephone conversations, I serve as counsel to the Committee.

You may recall that I indicated in our conversation that I was in the process of initiating a thorough review of all receipts, expenditures and previously filed FEC reports which had been handled since the inception of the Committee by Mr. Allen Haywood, the Committee's assistant treasurer. The purpose of the review was/is to insure that the Committee's FEC reports are accurate, that best efforts obligations have been met and that the Committee's receipts and disbursements have been properly accounted for and reported to the Commission in preparation for termination.

This is to advise you that the review is underway and ongoing. We will be preparing amendments to previously filed FEC reports which we hope to have ready for filing shortly. Further, we filed on May 29, 2003 an amended Statement of Organization which replaces Mr. Allen Haywood as Custodian of Records (I will now serve in that capacity) and as Assistant Treasurer. We have also amended the Committee's address to reflect that it is no longer located at Mr. Haywood's office. Mr. Haywood has been replaced in all capacities and removed from further involvement with the Committee.

It is my hope that we will shortly have completed and ready for filing any amendments to the FEC reports which may be required.

Thank you for bringing to the Committee's attention the situation regarding employer/occupation information, which is what prompted this overall review. I will be back in touch with you once the review is completed.

BRUSSELS
CHICAGO
DENVER

DETROIT
JACKSONVILLE
LOS ANGELES
MADISON

MILWAUKEE
ORLANDO
SACRAMENTO

SAN DIEGO
SAN DIEGO/DEL MAR
SAN FRANCISCO
TALLAHASSEE

TAMPA
WASHINGTON, D C
WEST PALM BEACH

002 1029431 1

28044183723

Ms. Jane Parks
June 11, 2003
Page 2

Thank you again for your assistance.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.
Attorney at Law

28044183724

28044183725

EXHIBIT 9

Mitchell, Cleta

From: Mitchell, Cleta
Sent: Wednesday, May 14, 2003 11 11 AM
To: Mike Mitchell (E-mail), Mark Stephens (E-mail), Neal Rhoades (E-mail), Carla Eudy (E-mail)
Cc: Allen Haywood (E-mail), Ted Koch (E-mail)
Subject: suggestion to make sure Joint Committee is completely correct

Mike, Mark, Neal, Carla, Allen, Ted

I talked today with Jane Parks, the FEC analyst who called Mike yesterday about missing information for employer/occupation of donors on the report -- she told me that the joint committee was missing 80% of the employer/occupation information. Allen said he has filed an amendment last week which added information for 200 donors -- however, he did not do a cover letter which itemized what he'd done -- Allen now says he's going to amend the letter he sent a few weeks ago to clearly indicate that he did send follow up letters within 30 days to donors who failed to include employer/occupation information on their response cards.

The FEC says we need to file a response by May 23 and Allen believes that his response being filed prior to that date will be sufficient.

Frankly, I have some concerns about this joint committee -- and I don't want to have the FEC decide to conduct an audit or turn this over to the General Counsel which is what Jane Parks told Mike Mitchell and me that she was going to do if there isn't some satisfactory resolution within a week.

This is my suggestion as to how we should proceed. I would suggest we have Ted Koch conduct an independent internal audit of the books and records of this committee, review all the reports and amendments filed to date with the FEC, and reconcile everything -- and if there need to be any further amendments filed, to prepare those as well. I would like to have a thorough review and report of this committee to be sure everything is the way it's supposed to be -- and if it isn't, that we would file whatever needs to be filed to fix it with FEC so they don't come back and do it for us -- which would subject us to fines and penalties, not to mention bad publicity. Included in Ted's report should be a narrative of what steps have been taken to correct any problems or mistakes that he might have found.

If Ted is available to do that right away, I would certainly feel more comfortable having that done -- and try to get it done within the next week, if that is possible. It would be a way to document that we've done everything we could think of to do to be sure it is correct. This would also be a way for us to protect everyone involved, including Allen, to be sure that the system is working correctly.

Please respond as soon as possible to this suggestion. If someone has a better idea for a way to be sure this committee is being properly handled, I'm certainly not married to this idea. I just thought this might be in the best interests of Sen Dole and in keeping with the way she likes for things to be done -- which is correctly and as close to perfectly as humanly possible.

Thanks Cleta

Cleta Mitchell, Esq
Foley & Lardner
3000 K Street, N W
Washington, D C 20007
(202) 295-4081 (direct line)
(202) 672-5399 (fax)
cmitchell@foleylaw.com

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28044183727

EXHIBIT 10

ETEXT ATTACHMENT

05/14/2003 09 : 56

May 14, 2003

Ms Jane Parks
Reports Analysis Division
Federal Election Commission
999 E St NW
Washington, DC 20463

Dear Ms Parks

This letter is in response to your request for additional information regarding the "best efforts" information and procedures of the Dole North Carolina Victory Committee, Inc (identification number C00378117)

The Committee included the required request for information on all of its solicitations. Sample solicitations were sent by messenger to the attention of John Gibson at the FEC on April 24, 2003. The Committee routinely sent a follow-up letter to those contributors who did not initially provide all of the requested information. Sample follow-up letters were also sent by messenger to Mr. Gibson on April 24, 2003. It was the standard practice of the Committee to send these follow-up letters within 30 days of the receipt of a contribution, a fact which was omitted from my Form 99 letter to Mr. Gibson dated April 24, 2003. Finally, I had expressed my intent in my Form 99 letter of April 24, 2003 to file amendments on or before May 7, 2003 disclosing additional information. These amendments were filed on May 6, 2003.

Please call me if you have any questions or need any additional information at (202) 682-5390 or (202) 409-8095

Sincerely

Allen Haywood
Comptroller, Dole North Carolina Victory Committee, Inc

28044183729

EXHIBIT 11

Mike Mitchell

From:
Sent: Monday, May 19, 2003 3:11 PM
To: CMitchell@foleylaw.com, Mike Mitchell; mstephens@elizabethdole.org;
Cc:
Subject: Re Update

Jane Parks from the FEC called this afternoon to tell me that she has completed her review of amendments and reponses to her questions, and that she is satisfied with the response and has dropped the matter.
-Allen

28044183730

Mike Mitchell

From: Mike Mitchell
Sent: Wednesday, May 14, 2003 4 03 PM
To: Mike Mitchell
Subject: FW: suggestion to make sure Joint Committee is completely correct

-----Original Message-----

From: Mike Mitchell
Sent: Wednesday, May 14, 2003 4:02 PM
To: 'Mitchell, Cleta'; Mark Stephens (E-mail); Neal Rhoades (E-mail); Carla Eudy (E-mail)
Cc: Allen Haywood (E-mail); Ted Koch (E-mail)
Subject: RE: suggestion to make sure Joint Committee is completely correct

I am in favor of going the extra mile to keep Senator Dole's good reputation clean of any FEC inquiry, no matter how minor.

I think we need to know whether Allen's amendment to the report, and future amendment of his letter, would be enough to solve this problem. Perhaps we should have a joint conference call with Jane Parks so that we have a meeting of the minds on what they need, and when, and to show a satisfactory level of attention to the FEC's concerns to discourage them from sending anything to their general counsel. I believe that an amendment of Allen's prior letter may not be enough. But a full internal audit may be more than is necessary (in light of the time constraints and costs).

I also favor informing Senator Dole of these communications from the FEC, so that there are no surprises for her.

-----Original Message-----

From: Mitchell, Cleta [mailto:CMitchell@foleylaw.com]
Sent: Wednesday, May 14, 2003 11:11 AM
To: Mike Mitchell, Mark Stephens (E-mail); Neal Rhoades (E-mail); Carla Eudy (E-mail)
Cc: Allen Haywood (E-mail); Ted Koch (E-mail)
Subject: suggestion to make sure Joint Committee is completely correct

Mike, Mark, Neal, Carla, Allen, Ted:

I talked today with Jane Parks, the FEC analyst who called Mike yesterday about missing information for employer/occupation of donors on the report -- she told me that the joint committee was missing 80% of the employer/occupation information. Allen said he has filed an amendment last week which added information for 200 donors -- however, he did not do a cover letter which itemized what he'd done -- Allen now says he's going to amend the letter he sent a few weeks ago to clearly indicate that he did send follow up letters within 30 days to donors who failed to include employer/occupation information on their response cards.

The FEC says we need to file a response by May 23 and Allen believes that his response being filed prior to that date will be sufficient.

Frankly, I have some concerns about this joint committee -- and I don't want to have the FEC decide to conduct an audit or turn this over to the General Counsel which is what Jane Parks told Mike Mitchell and me that she was going to do if there isn't some satisfactory resolution within a week.

28044183732

EXHIBIT 12

2804183733

This is my suggestion as to how we should proceed: I would suggest we have Ted Koch conduct an independent internal audit of the books and records of this committee, review all the reports and amendments filed to date with the FEC, and reconcile everything -- and if there need to be any further amendments filed, to prepare those as well. I would like to have a thorough review and report of this committee to be sure everything is the way it's supposed to be -- and if it isn't, that we would file whatever needs to be filed to fix it with FEC so they don't come back and do it for us -- which would subject us to fines and penalties, not to mention bad publicity. Included in Ted's report should be a narrative of what steps have been taken to correct any problems or mistakes that he might have found.

If Ted is available to do that right away, I would certainly feel more comfortable having that done -- and try to get it done within the next week, if that is possible. It would be a way to document that we've done everything we could think of to do to be sure it is correct. This would also be a way for us to protect everyone involved, including Allen, to be sure that the system is working correctly.

Please respond as soon as possible to this suggestion. If someone has a better idea for a way to be sure this committee is being properly handled, I'm certainly not married to this idea. I just thought this might be in the best interests of Sen. Dole and in keeping with the way she likes for things to be done -- which is correctly and as close to perfectly as humanly possible.

Thanks. Cleta

Cleta Mitchell, Esq.
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3000 K Street, N.W.
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28044183734

EXHIBIT 13

Mike Mitchell

From: Mark Stephens [mstephens@elizabethdole.org]
Sent: Wednesday, May 14, 2003 4:36 PM
To: 'Mitchell, Cleta'; Mike Mitchell, 'Neal Rhoades (E-mail)', 'Carla Eudy (E-mail)'
Cc: 'Allen Haywood (E-mail)', 'Ted Koch (E-mail)'
Subject: RE: suggestion to make sure Joint Committee is completely correct

Cleta - Just do it. Get the FEC happy. Pay Ted out of the funds remaining. Get the records right & and then close this puppy down I do not want E. Dole getting hammered politically over bureaucratic oversight within the committee. Do what you have to do to get this matter in hand - including discussions with the FEC to keep this committee out of hot water.

If you have any difficulty - let me know.

Mark

-----Original Message-----

From: Mitchell, Cleta [mailto:CMitchell@foleylaw.com]
Sent: Wednesday, May 14, 2003 11:11 AM
To: Mike Mitchell (E-mail); Mark Stephens (E-mail); Neal Rhoades (E-mail); Carla Eudy (E-mail)
Cc: Allen Haywood (E-mail); Ted Koch (E-mail)
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Thanks. Cleta

Cleta Mitchell, Esq.
Foley & Lardner
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cmitchell@foleylaw.com

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EXHIBIT 14

28044183737

Mitchell, Cleta

From:
Sent: Wednesday, May 14, 2003 4 02 PM
To: 'Mitchell, Cleta'
Subject: RE. suggestion to make sure Joint Committee is completely correct

Amen!

-----Original Message-----

From: Mitchell, Cleta [mailto:CMitchell@foleylaw.com]
Sent: Wednesday, May 14, 2003 11:11 AM
To: Mike Mitchell (E-mail); Mark Stephens (E-mail); Neal Rhoades (E-mail); Carla Eudy (E-mail)
Cc: Allen Haywood (E-mail); Ted Koch (E-mail)
Subject: suggestion to make sure Joint Committee is completely correct

Mike, Mark, Neal, Carla, Allen, Ted

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The FEC says we need to file a response by May 23 and Allen believes that his response being filed prior to that date will be sufficient.

Frankly, I have some concerns about this joint committee -- and I don't want to have the FEC decide to conduct an audit or turn this over to the General Counsel which is what Jane Parks told Mike Mitchell and me that she was going to do if there isn't some satisfactory resolution within a week.

This is my suggestion as to how we should proceed. I would suggest we have Ted Koch conduct an independent internal audit of the books and records of this committee, review all the reports and amendments filed to date with the FEC, and reconcile everything -- and if there need to be any further amendments filed, to prepare those as well. I would like to have a thorough review and report of this committee to be sure everything is the way it's supposed to be -- and if it isn't, that we would file whatever needs to be filed to fix it with FEC so they don't come back and do it for us -- which would subject us to fines and penalties, not to mention bad publicity. Included in Ted's report should be a narrative of what steps have been taken to correct any problems or mistakes that he might have found.

If Ted is available to do that right away, I would certainly feel more comfortable having that done -- and try to get it done within the next week, if that is possible. It would be a way to document that we've done everything we could think of to do to be sure it is correct. This would also be a way for us to protect everyone involved, including Allen, to be sure that the system is working correctly.

Please respond as soon as possible to this suggestion. If someone has a better idea for a way to be sure this committee is being properly handled, I'm certainly not married to this idea. I just thought this might be in the best interests of Sen. Dole and in keeping with the way she likes for things to be done -- which is correctly and as close to perfectly as humanly possible.

Thanks Cleta

Cleta Mitchell, Esq
Foley & Lardner
3000 K Street, N W
Washington, D C 20007

(202) 295-4081 (direct line)
(202) 672-5399 (fax)
cmitchell@foleylaw.com

The information contained in this e-mail message may be privileged and confidential information and is intended only for the use of the individual and/or entity identified in the alias address of this message. If the reader of this message is not the intended recipient, or an employee or agent responsible to deliver it to the intended recipient, you are hereby requested not to distribute or copy this communication. If you have received this communication in error, please notify us immediately by telephone or return e-mail and delete the original message from your system. Thank you.

28044183739

28044183740

EXHIBIT 15

May 21, 2003

WRITER'S DIRECT LINE
202 295 4081
cmitchell@foleylaw.com EMAIL

CLIENT/MATTER NUMBER
042374 0103

PRIVILEGED AND CONFIDENTIAL

VIA FACSIMILE

Mr. Allen Haywood
Ms. Carla Eudy
900 2nd Street, NE
Suite 114
Washington, DC 20002

Re: Dole North Carolina Victory Committee and NC Salute to
George W. Bush Committee Records

Dear Allen and Carla:

This is to memorialize my voicemail messages to Allen on his cell phone and his home last night. Based on the initial review of records and information performed at my request by Ted Koch related to the Dole North Carolina Victory Committee, a joint fundraising committee during the 2002 election, I am hereby requesting that all books, records, documents and other information related to *both* joint fundraising committees related to the Dole 2002 Committee, Inc. be delivered to my office by the close of business TODAY, May 21, 2003.

This request includes all documents and records involving not only the Dole NC Victory Committee but also the NC Salute to George W. Bush Committee, Inc.

Further, Allen, you should either provide copies of all bank statements and cancelled checks for both committees or, in the alternative, please provide documentary evidence of your written request to the bank that copies of all such records have been ordered no later than the close of business today.

Carla, I am asking that you take the necessary steps to assist in making sure that Allen complies with my request for delivery of all records and documents to my office. There are some serious irregularities in the records reviewed to date for the Dole NC Victory Committee and I have been authorized by Mark Stephens and Neal Rhoades to oversee a complete and thorough review of all transactions related to both committees until we are satisfied that all entries are in order and the FEC reports are accurate.

I would hope that we can receive all the requested documents and records through a cooperative effort in order to conduct the necessary review and audits.

28044183741

Mr. Allen Haywood
May 21, 2003
Page 2

If that does not happen forthwith, we will have to consider other options in order to obtain the requested records and documents and make certain that both committees are in full compliance with the law.

Please call me at (202) 295-4081 if you have any questions. I will appreciate a prompt response

Sincerely,



Cleta Mitchell, Esq.
Attorney at Law

cc: Mark Stephens
Neal Rhoades
Ted Koch
Mike Mitchell

28044183742

28044183743

EXHIBIT 16

05/29/2003 13:05

**FEC
FORM 1****STATEMENT OF
ORGANIZATION**

(See Instructions)

FEC ID only

1 NAME OF
COMMITTEE (in full)(Check if name
is changed)Example: If typing, type
over the lines

12FE4M5

DOLE NORTH CAROLINA VICTORY COMMITTEE INC

ADDRESS (street or P.O. box)

P.O. Box 1154

X

(Check if address
is changed)

Alexandria

VA

22313

CITY ▲

STATE ▲

ZIP CODE ▲

COMMITTEE'S E-MAIL ADDRESS

COMMITTEE'S WEB PAGE ADDRESS (URL)

COMMITTEE'S FAX NUMBER

2028725399

2 DATE

M 05 D 29 Y 2003

3 FEC IDENTIFICATION NUMBER

C C00378117

4 IS THIS STATEMENT X NEW (N)

OR

AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Mike Mitchell

Signature of Treasurer

Electronically Filed by Mike Mitchell

Date

M 05 D 29 Y 2003

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. 5437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS

Office
Use
OnlyFor further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100**FEC FORM 1**
(Revised 02/2003)

28044183744

FEC Form 1 (Revised 02/2003)

Page 2

5 TYPE OF COMMITTEE (Check One)

- (a) This committee is a principal campaign committee (Complete the candidate information below)
- (b) ☒ This committee is an authorized committee, and is NOT a principal campaign committee (Complete the candidate information below)

Name of
CandidateCandidate
Party Affiliation

REP

Office
Sought

House

Senate

President

State

District

00

- (c) This committee supports/opposes only one candidate and is NOT an authorized committee

Name of
Candidate

- (d) This committee is a

(National, State
(or subordinate) committee of the(Democratic,
Republican, etc.) Party

- (e) This committee is a separate segregated fund

- (f) This committee supports/opposes more than one Federal candidate and is NOT a separate segregated fund or party committee

6 Name of Any Connected Organization or Affiliated Committee

ELIZABETH DOLE COMMITTEE INC

Mailing Address

PO BOX 2918

RALEIGH

NC

27601

CITY ▲

STATE ▲

ZIP CODE ▲

Relationship

Joint Fundraiser

Type of Connected Organization

Corporation

Corporation w/o Capital Stock

Labor Organization

Membership Organization

Trade Association

Cooperative

28044183745

FEC Form 1 (Revised 02/2003)

Page 3

Write or Type Committee Name

DOLE NORTH CAROLINA VICTORY COMMITTEE INC

- 7 Custodian of Records. Identify by name, address, (phone number -- optional), and position of the person in possession of Committee books and records

Full Name Cleta Mitchell, Esq.

Mailing Address 3000 K Street, N W

Washington DC 20007

Title or Position ▼ CITY ▲ STATE ▲ ZIP CODE ▲

Telephone number 202 - 295 - 4061

- 8 Treasurer: List the name and address (phone number -- optional) of the treasurer of the committee, and the name and address of any designated agent (e.g. assistant treasurer)

Full Name of Treasurer Mike Mitchell

Mailing Address 2500 Wachovia Capital Center

Raleigh NC 27601

Title or Position ▼ CITY ▲ STATE ▲ ZIP CODE ▲

Telephone number 919 - 821 - 6670

Full Name of Designated Agent _____

Mailing Address _____

CITY STATE ZIP

Telephone number _____ - _____ - _____

FEC Form 1 (Revised 02/2003)

Page 4

- 9 **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds

Name of Bank Depository etc

First Union Capitol Hill Branch

Mailing Address

215 Pennsylvania Avenue, SE

Washington

DC

20001

-

CITY ▲

STATE ▲

ZIP CODE ▲

28044183747

28044183748

EXHIBIT 17

July 15, 2003

WRITER'S DIRECT LINE
202 295 4081
cmitchell@foleylaw.com EMAIL

CLIENT/MATTER NUMBER
042374 0103

VIA ELECTRONIC MAIL

Ms. Jane Parks
Reports Analyst
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Dole North Carolina Victory Committee, Inc. ID# C00378117; North Carolina's
Salute to George W. Bush Committee, Inc. ID# C00373084

Dear Ms. Parks:

This is to follow up regarding our previous communications concerning the above-referenced joint fundraising committee of the North Carolina Republican Party and the Dole 2002 Committee, Inc., known as the Dole North Carolina Victory Committee, Inc. ("the Committee"). As per our previous communications via telephone and confirmed by my letter to you dated June 11, 2003, the Committee independently initiated a thorough review of the receipts, disbursements, FEC reports, documents and bank records of the Committee since inception through the present date.

The internal review has now been substantially completed and it would appear that the individual who was retained to manage the contributions, disbursements and FEC compliance matters for the Committee, Mr. Allen Haywood, did not properly perform those functions and responsibilities. It appears from the records we have reviewed that Mr. Haywood apparently paid amounts to himself from Committee funds that were not authorized and that were not reported by Mr. Haywood to the Federal Election Commission.

The Committee has prepared amendments to the previously filed FEC reports to reflect as accurately as possible all information required by the Commission. The amendments to the reports are being filed today contemporaneously with the filing of this letter. You will note from the report(s) that Mr. Haywood on certain occasions deposited funds into the Committee's account in an improper manner which was not authorized by the Committee and such unauthorized deposits are indicated specifically on the report(s).

Additionally, after it became apparent that there were irregularities with regard to the Committee, we conducted an internal review of the books and records of another joint fundraising committee, North Carolina's Salute to George W Bush Committee, Inc. ("Salute Committee"), which Mr. Haywood oversaw, even though the FEC approved the termination of the Salute Committee on May 23, 2003. The participants in the Salute Committee included the North Carolina

28044183749

Ms. Jane Parks
July 15, 2003
Page 2

Republican Party, the Dole 2002 Committee, Inc. and the Hayes for Congress Committee. Mr. Haywood was the contributions and compliance manager for the Salute Committee.

The internal review of the Salute Committee's records has also been concluded. The Commission is hereby advised that it appears that Mr. Haywood paid amounts to himself from the Salute Committee's funds which were neither authorized nor reported to the FEC. As a result of those unauthorized payments, amendments to the Salute Committee's FEC reports are also being filed today.

Upon ascertaining all of these irregularities, we notified the appropriate law enforcement authorities regarding the situation. Please be assured that the participants in both joint fundraising committee(s) have provided and will continue to provide to the Department of Justice all information, documents and records necessary to assist with investigation of this matter.

It is important to note that Mr. Haywood was only engaged to manage the contributions and compliance for these two joint committees. Mr. Haywood had no direct relationship with the North Carolina Republican Party, the Dole 2002 campaign, or the Hayes for Congress campaign. Further, his role with both joint fundraising committees has been completely severed.

We appreciate your assistance as we address the problems that have been discovered. Please contact me at (202) 295-4081 if you have any questions. Thank you.

Sincerely,

/s/ *Cleta Mitchell*

Cleta Mitchell, Esq.
Attorney at Law

ETEXT ATTACHMENT

07/15/2003 15:11

July 15, 2003

n

VIA ELECTRONIC MAIL n

u

Ms. Jane Parks n

Reports Analyst n

Federal Election Commission n

999 E Street, NW n

Washington, D.C. 20463LL n

n

Re: Dole North Carolina Victory Committee, Inc. ID# C00378117 n

North Carolina's Salute to George W. Bush Committee, Inc. ID# C00373084 n

n

Dear Ms. Parks: n

u

u This is to follow up regarding our previous communications concerning the above-referenced joint fundraising committee of the North Carolina Republican Party and the Dole 2002 Committee, Inc. known as the Dole North Carolina Victory Committee, Inc. ("the Committee"). As per our previous communications via telephone and confirmed by my letter to you dated June 11, 2003, the Committee independently initiated a thorough review of the receipts, disbursements, FEC reports, documents and bank records of the Committee since inception through the present date. n

n

n The internal review has now been substantially completed and it would appear that the individual who was retained to manage the contributions, disbursements and FEC compliance matters for the Committee, Mr. Allen Haywood, did not properly perform those functions and responsibilities. It appears from the records we have reviewed that Mr. Haywood apparently paid amounts to himself from Committee funds that were not authorized and that were not reported by Mr. Haywood to the Federal Election Commission. n

uu

u The Committee has prepared amendments to the previously filed FEC reports to reflect as accurately as possible all information required by the Commission. The amendments to the reports are being filed today contemporaneously with the filing of this letter. You will note from the report(s) that Mr. Haywood on certain occasions deposited funds into the Committee's account in an improper manner which was not authorized by the Committee and such unauthorized deposits are indicated specifically on the report(s). n

u

n Additionally, after it became apparent that there were irregularities with regard to the Committee, we conducted an internal review of the books and records of another joint fundraising committee, North Carolina's Salute to George W. Bush Committee, Inc. ("Salute Committee") which Mr. Haywood oversaw, even though the FEC approved the termination of the Salute Committee on May 23, 2003. The participants in the Salute Committee included the North Carolina Republican Party, the Dole 2002 Committee, Inc. and the Hayes for Congress Committee. Mr. Haywood was the contributions and compliance manager for the Salute Committee. n

u

u The internal review of the Salute Committee's records has also been concluded. The Commission is hereby advised that it appears that Mr. Haywood paid amounts to himself from the Salute Committee's funds which were neither authorized nor reported to the FEC. As a result of those unauthorized payments, amendments to the Salute Committee's FEC reports are also being filed today. n

n

n Upon ascertaining all of these irregularities, we notified the appropriate law enforcement authorities regarding the situation. Please be assured that the participants in both joint fundraising committee(s) have provided and will continue to provide to the Department of Justice all information, documents and records necessary to assist with investigation of this matter. n

28044183751

ETEXT ATTACHMENT

□

It is important to note that Mr. Haywood was only engaged to manage the contributions and compliance for these two joint committees. Mr. Haywood had no direct relationship with the North Carolina Republican Party, the Dole 2002 campaign, or the Hayes for Congress campaign. Further, his role with both joint fundraising committees has been completely severed. □

□

We appreciate your assistance as we address the problems that have been discovered. Please contact me at (202) 295-4081 if you have any questions. Thank you. □

□

Sincerely, □

□

/s/ Cleta Mitchell □

□

Cleta Mitchell, Esq. □

Attorney at Law □

□

FOLEY & LARDNER □

WASHINGTON HARBOUR □

3000 K STREET, N.W. SUITE 500 □

WASHINGTON D.C. 20007-5143 □

202 672 5300 TEL □

202 672 5399 FAX □

www.foleylardner.com □

□

WRITER'S DIRECT LINE □

202 295 4081 □

cmitchell@foleylaw.com EMAIL □

□

28044183752

28044183753

EXHIBIT 18

Presented by the Federal Election Commission**TRY A: NEW SEARCH RETURN TO: FEC HOME PAGE****Committee ID: C00378117****DOLE NORTH CAROLINA VICTORY COMMITTEE INC**PO Box 1154
Alexandria, VA 22313**Treasurer Name:** MIKE MITCHELL
Committee Designation: J (JOINT FUND RAISER)
Committee Type: X (NON-QUALIFIED PARTY)**CANDIDATE:**
DOLE, ELIZABETH H ID: S2NC00083**NOTE:**

Candidate listings may appear here as a result of draft committees or independent expenditure committees registering with the FEC. If no official documents of an authorized committee appear below, the individual identified here has taken no action to become a candidate.

Click the Display Image column to quickly view a report page by page.
Click the Display PDF column to receive and view/print entire reports in PDF format.

Year 2004						
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Image or PDF
MISCELLANEOUS REPORT TO FEC		02/18/2004			2	24990522021 PDF
MISCELLANEOUS REPORT TO FEC		10/14/2004			8	24038551152 PDF
APRIL QUARTERLY		04/07/2004	01/01/2004	03/31/2004	6	24990932588 PDF
JULY QUARTERLY		07/08/2004	04/01/2004	06/30/2004	6	24961742250 PDF
OCTOBER QUARTERLY		10/14/2004	07/01/2004	09/30/2004	7	24962454754 PDF
POST-GENERAL		11/30/2004	10/01/2004	11/22/2004	6	24991322343 PDF
Year 2003						

Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Image or PDF
MISCELLANEOUS DOCUMENT		01/24/2003			2	23037941625 PDF
MISCELLANEOUS REPORT TO FEC		04/04/2003			1	23990657264 PDF
MISCELLANEOUS REPORT TO FEC		04/04/2003			1	23990657592 PDF
MISCELLANEOUS REPORT TO FEC		04/24/2003			1	23990813879 PDF
MISCELLANEOUS REPORT TO FEC		05/14/2003			1	23990899023 PDF
MISCELLANEOUS REPORT TO FEC		05/15/2003			1	23990914713 PDF
MISCELLANEOUS REPORT TO FEC		05/16/2003			1	23990924131 PDF
STATEMENT OF ORGANIZATION	AMEND	05/29/2003			4	23991007924 PDF
MISCELLANEOUS REPORT TO FEC		06/11/2003			2	23991070252 PDF
MISCELLANEOUS REPORT TO FEC		07/15/2003			2	23991374038 PDF
APRIL QUARTERLY		04/14/2003	01/01/2003	03/31/2003	9	23990704239 PDF
APRIL QUARTERLY	AMEND	07/15/2003	01/01/2003	03/31/2003	25	23991384555 PDF
REQUEST FOR ADDITIONAL INFORMATION		01/21/2004	01/01/2003	03/31/2003	3	24038272291 PDF
JULY QUARTERLY		07/15/2003	04/01/2003	06/30/2003	18	23991384953 PDF
REQUEST FOR ADDITIONAL INFORMATION		01/28/2004	04/01/2003	06/30/2003	3	24038281750 PDF
OCTOBER QUARTERLY		10/15/2003	07/01/2003	09/30/2003	8	23992075318 PDF
YEAR-END		01/28/2004	10/01/2003	12/31/2003	10	24990218663 PDF
Year 2002						
Document Filed	Amended	Filed On	From Date	End Date	Pages	Display Image or PDF
STATEMENT OF		05/31/2002			6	22037594427

ORGANIZATION						PDF
STATEMENT OF ORGANIZATION	AMEND	10/31/2002			9	22037831081 PDF
MISCELLANEOUS REPORT TO FEC		12/11/2002			3	22993019084 PDF
MISCELLANEOUS REPORT TO FEC		12/11/2002			3	22993019114 PDF
STATEMENT OF ORGANIZATION	AMEND	12/24/2002			4	22037910106 PDF
JULY QUARTERLY		07/15/2002	04/01/2002	06/30/2002	19	22991376242 PDF
JULY QUARTERLY	AMEND	01/10/2003	04/01/2002	06/30/2002	19	23990069935 PDF
JULY QUARTERLY	AMEND	07/15/2003	04/01/2002	06/30/2002	20	23991374876 PDF
PRE-PRIMARY		08/29/2002	07/01/2002	08/21/2002	147	22991683750 PDF
PRE-PRIMARY	AMEND	10/15/2002	07/01/2002	08/21/2002	147	22992117277 PDF
PRE-PRIMARY	AMEND	12/11/2002	07/01/2002	08/21/2002	9	22037890763 PDF
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PRE-PRIMARY	AMEND	03/18/2003	07/01/2002	08/21/2002	146	23990545686 PDF
PRE-PRIMARY	AMEND	07/15/2003	07/01/2002	08/21/2002	140	23991375436 PDF
OCTOBER QUARTERLY		10/15/2002	08/22/2002	09/30/2002	122	22992147107 PDF
OCTOBER QUARTERLY	AMEND	01/10/2003	08/22/2002	09/30/2002	116	23990070275 PDF
OCTOBER QUARTERLY	AMEND	03/18/2003	08/22/2002	09/30/2002	116	23990547157 PDF
REQUEST FOR ADDITIONAL INFORMATION		10/16/2002		10/16/2002	2	22037782784 PDF
OCTOBER QUARTERLY	AMEND	04/24/2003	07/01/2002	09/30/2002	8	23038061441 PDF
OCTOBER QUARTERLY	AMEND	07/15/2003	08/22/2002	09/30/2002	121	23991375940 PDF
PRE-GENERAL		10/24/2002	10/01/2002	10/16/2002	132	22992450132 PDF

PRE-GENERAL	AMEND	04/24/2003	10/01/2002	10/16/2002	1	23038061901 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		12/05/2002		12/05/2002	3	22037871678 PDF
PRE-GENERAL	AMEND	05/07/2003	10/01/2002	10/16/2002	133	23990873302 PDF
PRE-GENERAL	AMEND	07/15/2003	10/01/2002	10/16/2002	140	23991377055 PDF
PRE-GENERAL	AMEND	01/10/2003	10/01/2002	10/17/2002	132	23990070391 PDF
PRE-GENERAL	AMEND	03/20/2003	10/01/2002	10/17/2002	133	23990573819 PDF
REQUEST FOR ADDITIONAL INFORMATION		10/02/2002	04/01/2002	06/30/2002	10	22037744652 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		10/24/2002	04/01/2002	06/30/2002	11	22037814676 PDF
POST-GENERAL		12/05/2002	10/17/2002	11/25/2002	148	22992983668 PDF
POST-GENERAL	AMEND	01/10/2003	10/17/2002	11/25/2002	170	23990070564 PDF
POST-GENERAL	AMEND	03/21/2003	10/17/2002	11/25/2002	170	23990593749 PDF
POST-GENERAL	AMEND	04/24/2003	10/17/2002	11/25/2002	1	23038061902 PDF
POST-GENERAL	AMEND	05/07/2003	10/17/2002	11/25/2002	171	23990873489 PDF
REQUEST FOR ADDITIONAL INFORMATION		10/02/2002	07/01/2002	08/21/2002	18	22037744634 PDF
POST-GENERAL	AMEND	05/16/2003	10/17/2002	11/25/2002	171	23990924218 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		10/24/2002	07/01/2002	08/21/2002	6	22037814662 PDF
POST-GENERAL	AMEND	07/15/2003	10/17/2002	11/25/2002	189	23991377717 PDF
REQUEST FOR ADDITIONAL INFORMATION		02/26/2003	07/01/2002	08/21/2002	3	23038000022 PDF
YEAR-END		01/24/2003	11/26/2002	12/31/2002	8	23990137532

						PDF
YEAR-END	AMEND	04/24/2003	11/26/2002	12/31/2002	9	23990814321 PDF
REQUEST FOR ADDITIONAL INFORMATION		03/19/2003	07/01/2002	09/30/2002	18	23038015060 PDF
YEAR-END	AMEND	05/15/2003	11/26/2002	12/31/2002	8	23990914674 PDF
YEAR-END	AMEND	07/15/2003	11/26/2002	12/31/2002	12	23991384123 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		04/10/2003	07/01/2002	09/30/2002	4	23038034790 PDF
REQUEST FOR ADDITIONAL INFORMATION		03/19/2003	10/01/2002	10/16/2002	14	23038015082 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		04/10/2003	10/01/2002	10/16/2002	4	23038034794 PDF
REQUEST FOR ADDITIONAL INFORMATION		03/26/2003	10/17/2002	11/25/2002	30	23038022427 PDF
REQUEST FOR ADDITIONAL INFORMATION		04/09/2003	10/17/2002	11/25/2002	5	23038033960 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		04/17/2003	10/17/2002	11/25/2002	3	23038052041 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		05/01/2003	10/17/2002	11/25/2002	7	23038070561 PDF
REQUEST FOR ADDITIONAL INFORMATION		03/26/2003	11/26/2002	12/31/2002	2	23038022457 PDF
REQUEST FOR ADDITIONAL INFORMATION 2ND		04/17/2003	11/26/2002	12/31/2002	3	23038052049 PDF
REQUEST FOR ADDITIONAL INFORMATION		05/07/2003	11/26/2002	12/31/2002	2	23038072527 PDF

TRY A: [NEW SEARCH](#) [NEW ADVANCED SEARCH](#)
[RETURN TO: FEC HOME PAGE](#)

28044183759

EXHIBIT 19

Mike Mitchell

From: Mitchell, Cleta [CMitchell@foleylaw.com]
Sent: Tuesday, June 10, 2003 9:12 PM
To: Mike Mitchell, Mark Stephens (E-mail), Neal Rhoades (E-mail), Bill Cobey (E-mail)
Subject: Chronology for Meeting with US Attorney meeting -- 8 30 am, Wednesday June 11

The Dole NC Victory Committee was established in May, 2002 as a joint fundraising committee of the Dole campaign and the NC GOP -- as provided by federal law and FEC regulations.

Allen Haywood was appointed by ? (Carla Eudy) the general contractor for the fundraising events by the joint committee to manage the administrative and compliance responsibilities of the joint committee.

He paid himself and reported a check for \$6,000 in late June, 2002. That is the only reported disbursement to Allen Haywood. The list of other disbursements (unreported) can be provided; generally speaking, he began in August paying himself varying amounts at odd times from the account -- and withholding deposits in order to balance the reported receipts and disbursements.

the joint committee should have been terminated by January, 2003 at the latest -- it was not terminated because Allen Haywood kept stating that the committee was awaiting reimbursement from the Republican National Committee of amounts related to presidential trips to North Carolina. This turns out also to be false as the payments were made by the RNC some months earlier.

Please contact me for further information

Cleta Mitchell, Esq.
Foley & Lardner
3000 K Street, N.W.
Washington, D.C. 20007
(202) 295-4081 (direct line)
(202) 672-5399 (fax)
cmitchell@foleylaw.com

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28044183761

EXHIBIT 20

June 13, 2003

WRITER'S DIRECT LINE
202 295 4081
cmitchell@foleylaw com EMAIL

CLIENT/MATTER NUMBER
042374 0103

ATTORNEY WORK PRODUCT

VIA FACSIMILE (919) 856-4487

Mr. Bobby Higdon, Assistant U S. Attorney
Criminal Chief, Eastern District of North Carolina
310 New Bern Ave., Suite #800
Raleigh, NC 27601

Re. Dole North Carolina Victory Committee, Inc., North Carolina's
Salute to George W. Bush Committee, Inc.

Dear Mr. Higdon:

Please find attached to this letter three (3) documents submitted for your review. The first document is the letter which I plan to send to the Federal Election Commission should we determine it is necessary to advise the FEC of the criminal investigation prior to the completion of the amendments to the FEC reports. Our timetable is to complete the amendments to the FEC reports by the end of next week – in which case the letter would be a cover letter accompanying the amendments and would be revised to reflect that fact. If the letter is not filed contemporaneously with the amended FEC reports for both committees, the attached letter will be submitted to the FEC by the end of next week.

Also attached are the talking points prepared for my use in discussing this matter with members of the media should that become necessary, as well as talking points for Sen. Elizabeth Dole should she receive inquiries from the media. Of course, we want to be certain that all written and spoken words are appropriate and pose no problems or create any hindrance for your ongoing investigation.

Please advise me of any changes to these documents as well as any directives to bear in mind as this becomes public information.

Sincerely,



Cleta Mitchell, Esq.
Attorney at Law

Attachments (3)

28044183762

(date)

WRITER'S DIRECT LINE
202 295 4081
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CLIENT/MATTER NUMBER
042374 0103

VIA ELECTRONIC MAIL

Ms. Jane Parks
Reports Analyst
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Dole North Carolina Victory Committee, Inc ID# C00378117; North Carolina's
Salute to George W Bush Committee, Inc. ID# C00373084

Dear Ms Parks:

The Dole North Carolina Victory Committee, Inc., a joint fundraising committee of the Dole 2002 Committee, Inc. and the North Carolina Republican Party ("the Committee") has been reviewing the receipts, disbursements, FEC reports, documents and bank records of the Committee since inception, as per our earlier telephone conversation and confirmed by letter dated June 11, 2003.

This is to further follow up on those previous communications. While the internal review is not yet complete, it would appear that Mr. Allen Haywood, the individual who was retained to manage the contributions, disbursements and FEC compliance matters for the Committee, did not properly perform those responsibilities. It would further appear that Mr. Haywood paid amounts to himself from Committee funds that were not authorized and that were not reported by Mr. Haywood to the Federal Election Commission ("the Commission" or "FEC").

The Committee has notified the U.S Attorney's office and the FBI in Raleigh, North Carolina of these irregularities and an investigation is now ongoing. The Committee will provide all information, documents and records necessary to assist the Department of Justice investigation and enforcement of the law.

The Committee is preparing amendments to the previously filed FEC reports to reflect as accurately as possible all information required by the Commission. The amendments to the reports will be filed as soon as additional records can be obtained, the accounts reconciled and the amended reports prepared.

Additionally, after it became apparent that there were irregularities with regard to the Committee, an internal review of the books and records of another joint fundraising committee, North Carolina's Salute to George W. Bush Committee, Inc. ("Salute Committee") was initiated even though the FEC approved the termination of the Salute Committee on May 23, 2003. The

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participants in the Salute Committee included Dole 2002 Committee, Inc., the North Carolina Republican Party and the Hayes for Congress Committee. Mr. Haywood was also the contributions and compliance manager for the Salute Committee.

Although the internal review of the Salute Committee's records has just started, the Commission is hereby advised that it also appears that Mr. Haywood paid amounts to himself from the Salute Committee's funds which were neither authorized nor reported to the FEC. It also appears that it will be necessary to amend the Salute Committee's FEC reports upon completion of the review.

We have notified the FBI and the U. S. Attorney of the additional financial irregularities involving the Salute Committee.

It is important to note that Mr. Haywood was engaged as a vendor to manage the contributions and compliance for the two joint committees and that Mr. Haywood neither had nor has any relationship with the Dole 2002 campaign, the Hayes for Congress campaign or the North Carolina Republican Party

It is our intent to conclude the internal review of both joint committees quickly and to file all amended reports as soon as possible.

We appreciate your assistance as we address the problems that have been discovered. Please contact me at (202) 295-4081 if you have any questions. Thank you.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.
Attorney at Law

Cleta Mitchell Talking Points

- There were accounting irregularities discovered by an internal audit that involves 2 joint fundraising committees – the Dole North Carolina Victory Committee and the Salute to George Bush Committee (or whatever the correct name is for that committee).
- Mr Haywood did not work for, nor have any association with the Dole 2002 campaign, the Hayes for Congress campaign or the North Carolina Republican Party He was hired strictly to manage the joint committees.
- No Dole Campaign, North Carolina Republican Party or Hayes Campaign staff or consultants are implicated or under investigation.
- It is premature to tell you any dollar amounts at this time
- We have reason to believe that the person hired to manage the joint fund-raiser contributions and compliance - Mr. Allen Haywood – paid himself unauthorized funds and may have purposely filed inaccurate reports to the Federal Election Committee to hide those payments.
- The Salute Committee had three participants – NCGOP, Dole 2002, Robin Hayes for Congress
- The Dole North Carolina Victory Committee had two participants – Dole 2002 and the NCGOP.
- The irregularities were first discovered by Dole campaign staff and legal counsel.
- This matter has been turned over to the U.S Attorney and the FBI in Raleigh and the FEC has been made aware of the matter.
- Mr Haywood is a well known FEC compliance consultant in Washington D.C His background includes McCain for President 2000 and the National Republican Senatorial Committee.
- Other campaigns have had similar experiences such as Congressman Boehner, Senator Lott and former Congressman Army.
- There were many joint committees during the last cycle – including one used by Erskine Bowles.
- Joint committees are formed when two or more political organizations want to accomplish something together – generally to raise money. They share the expenses and share the funds raised.

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